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# RECORD, CASE No. 15,401.

905

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1017.

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FONG W-YE, APPELLANT,

*vs.*

THE UNITED STATES AND GEORGE E. GARD, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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FILED SEPTEMBER 22, 1893.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1893.

1 United States District Court, Northern District of California.

In the Matter of the Application of FONG WYE for a Writ of *Habeas Corpus*. No. 10739.

To the honorable the district court of the United States in and for the northern district of California, ninth circuit:

And now comes Fong Wye and makes this his petition and complaint to this honorable court, and respectfully shows:

I. That your petitioner is a person of the Chinese race, born in China, and not a naturalized citizen of the United States, and that at all the times hereinafter mentioned, and more especially at the time of the passage of the act of Congress approved May 5th, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," he was, always has been and still is entitled to remain in the United States, in that he was within the United States at the time of the passage of the act of Congress approved May 6th, 1882, and entitled "An act to execute certain treaty stipulations relating to Chinese," and has never thereafter and up to the time of making this his petition been without the United States, and that he now resides, and has resided for more than one year last past, in the county of Los Angeles, in the southern district of California.

II. That your petitioner on the 17th day of November, 1880, the day the treaty between the United States and China concerning immigration was concluded and signed, was within the United States, and was under the terms of said treaty accorded all the rights, privileges, immunities and exemptions which were then accorded to the citizens and subjects of the most favored nation, and prior to said last-named day, and in or about the month of July, 1879, had come to the United States with the intention of remaining and taking up his permanent residence therein, and with no definite intention of returning to China, and at the time of said treaty had become and has ever since been a permanent resident of the United States under and in pursuance of the invitation extended to him and at that time to all other Chinamen under the provisions of the fifth and sixth articles of the additional articles to the treaty between the United States of America and the Ta Tsing empire of the 18th of June, 1858, concluded and signed on the 28th day of July, 1868 (Burlingame treaty), which then and there declared that the high contracting parties "cordially recognize the inherent and inalienable right of man to change his home and allegiance,
2 and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or of permanent residents," and further declared that "Chinese subjects * * * residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to * * * residence as may be there enjoyed by the citizens or subjects of the most favored nation."

III. That heretofore, to wit, on the 3rd day of Sept., 1893, one Isaac N. Wilson presented to the Honorable E. M. Ross, United States district judge in and for the southern district of California, a complaint verified by him, which charged that your petitioner was a Chinese laborer residing within the southern district of California, and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and that your petitioner was then and there entitled to remain in the United States, and was after one year from the passage of said act found unlawfully within the jurisdiction of the United States without the certificate of residence provided for in section 6 of said act. That thereupon the said district judge made an order directing that the said complaint be filed, and that a warrant issue, which warrant was thereafter issued and delivered to the marshal of the United States in and for the southern district of California. Copies of said complaint, order and warrant are hereto attached and made part hereof.

That afterwards, to wit, on the 4th day of September, 1893, the said United States marshal apprehended your petitioner and took him into custody and produced him before the said district judge.

IV. That the said Isaac N. Wilson, who made and presented the complaint hereinabove referred to, is not and was not at any of the times herein mentioned, a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, or in any way connected with any of the executive departments of the Government of the United States.

V. That thereafter, on the 6th day of September, 1893, your said petitioner was brought before the district court of the United States in and for the southern district of California, and testimony was introduced on behalf of the Government and on behalf of your petitioner, and the cause thereupon submitted, and on the 8th day of September, 1893, the said district court in and for the southern district of California made an order directing that your petitioner be deported from the United States to China, and remanded your petitioner to the custody of Geo. E. Gard, United States marshal in and for the southern district of California. Copies of said orders are hereto attached and made a part hereof.

VI. That your petitioner is detained and restrained of his liberty by and in the custody of George E. Gard, the marshal of the United States in and for the southern district of California, under and by color of the authority of the United States, wrongfully and unlawfully, as your petitioner is informed and verily believes, and in violation of the provisions of the Constitution of the United States, and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree, or other judicial process of any court other than the said order of the said United States judge heretofore referred to herein, and that he is now detained by virtue of the alleged claim and authority given to the said marshal of the

United States in and for the southern district of California by and under said order made by said judge.

3 VIII. That, as your petitioner is informed and verily believes, his detention by the said United States marshal in and for the southern district of California, by and under the direction of the order of said United States judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority, under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th section of the said act of Congress of May 5th, 1892, to wit, of not having applied to the collector of internal revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th section of said act of Congress of May 5th, 1892, is unconstitutional, void, and of no effect.

IX. That your petitioner is informed and verily believes that his detention by the United States marshal in and for the southern district of California, as aforesaid, is without jurisdiction, and void for the reason that the said Isaac N. Wilson, who made and presented the complaint hereinabove referred to, was not at any of the times herein mentioned a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, and that the filing of said complaint and the issuance of a warrant thereon was without authority of law and in excess of the jurisdiction of the said district judge for the southern district of California, and that all proceedings thereunder were therefore illegal and void.

X. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other court or judge.

Wherefore your petitioner prays that this honorable court will order a writ of *habeas corpus* to be issued out of this court to said George E. Gard, the marshal of the United States in and for the southern district of California, requiring him to forthwith produce the body of your petitioner before this honorable court, and there to abide what shall be ordered by this honorable court in the premises.

And as in duty bound your petitioner will ever pray.

FONG (Chinese signature) WYE.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
*Attorneys for Petitioner.*

CITY OF SAN FRANCISCO, } ss:
*Northern District of California,* }

Fong Wye, being duly sworn, deposes and says that he is the petitioner and complainant hereinbefore named; that he has heard read

and translated to him the foregoing petition and complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

FONG (Chinese signature) WYE.

Subscribed and sworn to before me this 11th day of September, 1893.

[SEAL.] JNO. F. LYONS,
*Notary Public in and for the City & County of San Francisco, State of California.*

4 [Endorsed:] No. —. U. S. district court, northern district of California. *In re* application of Fong Wye for writ of *habeas corpus*. Petition for writ. Filed September —, 1893. —— ——, clerk, by —— ——, deputy clerk. Harvey S. Brown and Thos. D. Riordan, attorneys for petitioners.

5 UNITED STATES OF AMERICA, } ss:
*Southern District of California,* }

Be it remembered that on this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, William M. Van Dyke, a commissioner duly appointed by the circuit court of the United States of America for the southern district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, etc., pursuant to the acts of Congress in that behalf, personally appeared Isaac N. Wilson, who, being duly sworn according to law, deposes and says that Fong Wye, being a Chinese laborer at and residing in the county of Los Angeles, State of California, within the southern district of California and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and who was then and there entitled to remain in the United States, was, after one year from the passage of said act, to wit, on the 30th day of August, A. D. 1893, found unlawfully within the jurisdiction of the United States, to wit, at the county of Los Angeles, State of California, without the certificate of residence provided for in said act.

He, the said Fong Wye, still is and was residing in said county and State and in the first collection district of California during all the time within one year after the passage of said act—

6 Contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States.

ISAAC N. WILSON.

Sworn to and subscribed this 31st day of August, 1893, before me—
WM. M. VAN DYKE,
*Commissioner of U. S. Circuit Court,*
*Southern District of California.*

Let the foregoing complaint be filed and a warrant issued.
E. M. ROSS,
*District Judge.*

(Endorsed:) No. 471. U. S. district court, southern district of California. United States of America *vs.* Fong Wye. Complaint. Filed August 31st, 1893. E. H. Owen, clerk.

7 UNITED STATES OF AMERICA, }
*Southern District of California,* } *ss:*

The President of the United States of America to the marshal of the United States for the southern district of California and to his deputies or any or either of them, Greeting:

Whereas complaint on oath hath been made to me charging Fong Wye with a violation of the sixth section of the act of Congress entitled "An act to prevent the coming of Chinese persons into the United States," approved May 5, 1892:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Fong Wye and bring his body before the district court of the United States for the southern district of California on Monday, the 4th day of September, 1893, at 10.30 o'clock a. m., that he may then and there be dealt with according to law for the said offence.

Given under my hand this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the one hundred and eighteenth.

E. M. ROSS,
*U. S. District Judge in and for the*
*Southern District of California.*

Attest, etc.:
[SEAL.] E. H. OWEN, *Clerk.*

8 By virtue of the within warrant I have the body of Fong Wye before the Honorable E. M. Ross this 4th day of September, 1893.

GEO. E. GARD, *U. S. Marshal,*
By W. B. GARD, *Deputy.*

(Endorsed:) No. 471. U. S. district court, southern district of California. United States of America *vs.* Fong Wye. Warrant of arrest. Filed Sept. 4th, 1893. E. H. Owen, clerk.

9 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the

city of Los Angeles, on Monday, the 4th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
*vs.*
FONG WYE. } No. 471. Sec. 6, Geary Act.

George J. Denis, Esq., U. S. attorney, appearing for the Government; defendant present in custody of the marshal. The marshal having made return on the warrant hereinbefore issued, this case is called. Now comes the U. S. attorney and presents a telegram which he had received on September 2, 1893, from the U. S. Attorney General, which telegram is read by the court, ordered filed, and a copy substituted in lieu thereof. F. J. Thomas, Esq., appears and reads a telegram from A. B. Hotchkiss, Esq., attorney for defendant, and asks that this cause be continued at A. B. Hotchkiss' request until September 6th, 1893, at 3 p. m.

By consent of the U. S. attorney it is thereupon ordered that this cause be, and the same hereby is, continued until Wednesday, September 6th, 1893, at 2.30 p. m.

10 Form No. 2.

*The Western Union Telegraph Company.*

21,000 offices in America. Cable service to all the world.

Thos. T. Eckert, general manager. Norvin Green, president.

Receiver's No.: —. Time filed: —. Check: —.

Send the following message subject to the terms on back hereof, which are hereby agreed to.

SEPTEMBER 2ND, 189–.

Dated Washington, D. C., —— 2nd.

To U. S. Att'y Denis, Los Angeles, Calif.:

I am advised by the Secretary of the Treasury that there are no funds to execute the Geary law so far as same provides for deportation of Chinamen who have not procured certificates of residence. On that state of facts circuit court of United States for southern district of New York made following order: "Ordered that blank be, and he hereby is, discharged from the custody of the marshal, and ordered to be deported from the United States whenever provision for such deportation shall be made by the proper authorities." Ask court to make similar order in like cases.

OLNEY, *Att'y Gen'l.*

Read the notice and agreement on back.

All messages taken by this company are subject to the following terms:

11 To guard against mistakes or delays, the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of a message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employee of the company is authorised to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of

12 the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

THOS. T. ECKERT,
*General Manager.*
NORVIN GREEN,
*President.*

(Endorsed:) Nos. 468, '69, '70, '71, '72, '73. U. S. district court, southern dist. of California. Substituted copy of telegram from Attorney General. Filed Sept. 4th, 1893. E. H. Owen, clerk.

13 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city

of Los Angeles, on Wednesday, the sixth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA *vs.* FONG WYE. } No. 471. Prosecution under Sec. 6 of the Geary Act.

U. S. attorney is present for the Government; defendant present in court in custody of the U. S. marshal, with counsel, A. B. Hotchkiss, F. J. Thomas, and R. A. Ling. Thereupon plaintiffs, to sustain the issue on their side, having called as witnesses W. B. Gard, W. A. Hammel, and Isaac M. Wilson, who are severally and respectively duly sworn and give their testimony, and the Government thereupon having rested, and the defendant having moved to dismiss the proceedings, which motion is denied, to which defendant excepts, and it having been stipulated that I. R. Dunkelberger and Mr. Hay would testify, if sworn in this case, as in the case of U. S. *v.* Fong Louie, No. 470, and Ah Fawn having been sworn as interpreter, and defendant, to sustain the issue on his side, having called as a witness the defendant, who is duly sworn, and, through
14 interpreter, Ah Fawn), gives his testimony, and the matter having been submitted to the court, the court announces its decision as follows:

I find from the evidence and from the defendant's personal appearance and from his language, dress, and association that defendant is a Chinaman, and from his occupation that he is a laborer, and that he was such on the 5th day of May, 1892, and was then a resident of Los Angeles county, California, and has since remained such, and that he did not register in accordance with and in pursuance of the act of Congress of May 5th, 1892; that no excuse has been shown on his part for his failure to register, and upon those facts I order that he be deported to China. Findings, order, and judgment will be prepared accordingly.

15 In the District Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff, *vs.* FONG WYE, Defendant. } No. 471.

*Findings, Order, and Judgment.*

A verified complaint having been filed in this court charging Fong Wye with a violation of the sixth section of a certain act of Congress approved May 5, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and a warrant for the arrest of the said Fong Wye having been issued by me, Erskine M. Ross, United States district judge in and for the southern district

of California, made returnable before the district court for the southern district of California on the 4th day of September, 1893, and the said Fong Wye having been duly apprehended upon said warrant by the United States marshal in and for the southern district of California and brought before the said court upon the 4th day of September, 1893, and thereafter, upon the 6th day of September, 1893, a hearing was thereupon had of the matters charged in said complaint, the United States of America being represented by its attorney, George J. Denis, Esq., and the said Fong Wye
16 by A. B. Hotchkiss and F. J. Thomas, Esqs., and testimony having been adduced, I, Erskine M. Ross, judge as aforesaid, from such testimony do find that said Fong Wye is by race, color, dress, and appearance a Chinese person, and is and was at the times hereinafter stated a laborer by occupation; that he was a resident of the State of California, to wit, of the county of Los Angeles, at the time of the passage of the act of Congress of May 5, 1892, and has since continued such resident; that said Fong Wye was, after May 5, 1893, found to be a resident within the jurisdiction of the United States and of this district without the certificate of residence provided for in the act of Congress above referred to; that the said Fong Wye has neglected, failed, and refused to comply with the provisions of said act in this, to wit, that he, the said Fong Wye, a Chinese laborer, neglected, failed, and refused to apply for and obtain the certificate of residence required by said act; that Fong Wye has not established to my satisfaction that, by reason of accident, sickness, or other unavoidable cause, he was unable to procure such certificate; that said Fong Wye is unlawfully within the United States:

Now, therefore, I, Erskine M. Ross, judge as aforesaid, upon the foregoing facts do hereby order that said Fong Wye be removed from the United States to China; and it is further ordered that said deportation of the said Fong Wye be made from the port of San Francisco, within the limits of the northern district of California,
17 and that he be hereby committed to the custody of the United States marshal for the southern district of California to carry out this order.

Dated at Los Angeles, this 8th day of September, A. D. 1893.

E. M. ROSS,
*District Judge of the United States for the Southern District of California.*

(Endorsed:) No. 471. In the district court of the United States, southern district of California. The United States of America *vs.* Fong Wye. Findings, order, and judgment. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy.

18 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Friday, the eighth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA
*vs.*
FONG WYE.
} No. 471. Prosecution under Section 6 of the Geary Act.

Now comes F. J. Thomas, Esq., of counsel for defendant, and moves that proceedings be dismissed and defendant discharged; which motion the court declines to entertain; to which ruling defendant excepts; and thereupon defendant, by counsel, moves the court for a stay *or* proceedings in order that an appeal may be allowed; which motion is by the court denied; to which ruling defendant excepts.

19 In the District Court of the United States of America, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff and Respondent,
*vs.*
FONG WYE, Defendant and Appellant.
} No. 471.

The above-named defendant and appellant, conceiving himself aggrieved by the final judgment duly made and entered in the above-entitled cause on the 6th day of September, 1893, and by the order duly made and entered on the 8th day of September, 1893, doth hereby appeal from said final judgment and said order to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and all papers on which said order was made in the said cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 8th day of September, 1893.

A. B. HOTCHKISS,
FRANCIS J. THOMAS,
*Attorneys for said Defendant and Appellant.*

Application being made to me for the allowance of the foregoing appeal, the same is refused, there being, in my opinion, no appeal from the order of deportation.

Los Angeles, September 8th, 1893.

ROSS,
*District Judge.*

20 Received copy of within this 8th day of September, 1893.

GEORGE J. DENIS,
*United States Attorney.*

(Endorsed:) 471. In the district court of the United States of America, southern district of California. United States of America, plaintiff and respondent, *vs.* Fong Wye, defendant and appellant. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy. Francis J. Thomas, 22 Temple block, Los Angeles, Cal., attorney-at-law.

21 In the District Court of the United States of America in and for the Southern District of California.

THE UNITED STATES OF AMERICA
*vs.*
FONG WYE. } No. 471.

I, E. H. Owen, clerk of the district court of the United States of America in and for the southern district of California, do hereby certify the foregoing 16 pages, numbered from 1 to 16, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled matter.

Attest my hand and the seal of said district court of the United States for the southern district of California this
[SEAL.] 9th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

E. H. OWEN,
*Clerk of the United States District Court for the Southern District of California,*
By WM. M. VAN DYKE,
*Deputy Clerk.*

(Endorsed:) No. 10739. U. S. district court, northern district of California. In the matter of the application of Fong Wye for a writ of *habeas corpus*. Petition for writ. Filed September 11th, 1893. Southard Hoffman, clerk. Harvey S. Brown and
22 Thomas D. Riordan, attorney- for petitioner, 6 Montgomery avenue, San Francisco.

23 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable William W. Morrow, judge.

In the Matter of the Application of FONG WYE for a Writ of *Habeas Corpus*. No. 10739.

In this matter the application for the issuance of a writ of *habeas corpus* this day came on for hearing before the court—Harvey S. Brown, Esq., and Thomas D. Riordan, Esq., appearing as attorneys for the petitioner, and Charles A. Garter, Esq., United States attorney for the northern district of California, appearing on behalf of the United States—and, after hearing Mr. Riordan and Mr. Garter, it is by the court now here ordered that the application for the issuance of a writ of *habeas corpus*, as prayed for in the petition herein, be, and the same is hereby, denied, and that said petition be, and the same is hereby, dismissed.

24 United States District Court, Northern District of California.

In the Matter of the Application of FONG WYE for a Writ of *Habeas Corpus*.

*Notice of Appeal.*

The petitioner in the above-entitled proceeding, feeling himself aggrieved by the order heretofore made and entered herein in the district court of the United States in and for the northern district of California on the 11th day of September, 1893, declining to grant a writ of *habeas corpus* as prayed for in the petition herein and dismissing the petition, doth hereby appeal from the said order of said district court to the Supreme Court of the United States, and he prays that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

San Francisco, September 11th, 1893.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
*Attorneys for the Petitioner and Appellant.*

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
*U. S. Attorney for North. Dist. of Cal.*

(Endorsed:) Filed September 11th, 1893. Southard Hoffman, clerk.

25 In the Supreme Court of the United States.

In the Matter of the Application of FONG WYE for a Writ of *Habeas Corpus*.

FONG WYE, Appellant and Plaintiff in Error,
*vs.*
THE UNITED STATES OF AMERICA and GEORGE E. GARD, United States Marshal in and for the Southern District of California, Respondents and Defendants in Error.

*Assignment of Errors.*

Afterwards, to wit, on the 11th day of September, 1893, comes the said appellant and plaintiff in error, by Harvey S. Brown and Thos. D. Riordan, his attorneys, — says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the district court of the United States in and for the northern district of California erred in declining to grant the
26 application for a writ of *habeas corpus* and dismissing the petition filed herein, because the sixth section of the act of

Congress approved on the 5th day of May, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," etc., and each and every part thereof is unconstitutional and void and of no effect.

Second. That the said district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the presentation to and filing of a complaint with the Hon. E. M. Ross, United States district judge in and for the southern district of California, and the issuance of a warrant thereon was in excess of the jurisdiction of said judge, and therefore all proceedings had thereafter were illegal, void, and of no effect.

Third. That the district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the respondents in error had no warrant or authority of the law to confine or imprison the petitioner nor to detain him in custody.

Fourth. That the district court of the United States in and for the northern district of California erred in not issuing the writ of *habeas corpus* prayed for in the said petition and thereafter dis-
27 charging said petitioner upon the facts set forth in the said petition.

Wherefore the said petitioner prays that the order of the district court in and for the northern district of California, entered on the 11th day of September, 1893, declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, be reversed, and that the district court of the United States be ordered to enter an order granting a writ of *habeas corpus* as prayed for in said petition.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
*Att'ys for Appellant and Plaintiff in Error.*

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
*U. S. Attorney for North. Dist. of Cal.*

(Endorsed:) Filed Sept. 11th, 1893. Southard Hoffman, clerk.

28 UNITED STATES OF AMERICA, }
*Northern District of California,* } ss:

I, Southard Hoffman, clerk of the district court of the United States in and for the northern district of California, in the ninth judicial circuit, do hereby certify that the foregoing pages, numbered from 1 to twenty-seven (27), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of Fong Wye for a writ of *habeas corpus,* as the same remain of record on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of San Francisco, in the northern district of California, in the ninth circuit, this 13th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

Seal of the U. S. District Court, Northern Dist. of California.

SOUTHARD HOFFMAN, *Clerk*.

Endorsed on cover: Case No. 15,401. N. California D. C. U. S. Term No., 1017. Fong Wye, appellant, *vs.* The United States and George E. Gard, United States marshal for the southern district of California. Filed September 22d, 1893.

171
(53 Fed 854)
154 U.S. 503
154 U.S. 503

# TRANSCRIPT OF RECORD.

## UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT

OCTOBER TERM, A. D. 1891.

---

ROBERT C. TAYLOR, KATHERINE TAYLOR and MARGARET TAYLOR,

*Appellees.*

*vs:*

FRANKLIN SAVINGS BANK, HIRAM H. THOMAS, HENRY GILSDORFF, *et al.*,

*Appellants.*

---

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

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HENRY GILSDORFF, *et al.*,
*Appellants.*

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**Appeal from the Circuit Court of the United States for the Northern District of Illinois.**


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IN THE

# CIRCUIT COURT OF THE UNITED STATES,

## FOR THE NORTHERN DISTRICT OF ILLINOIS,

## NORTHERN DIVISION.

---

ROBERT C. TAYLOR, KATHERINE TAYLOR and MARGARET TAYLOR,

*vs.*

FRANKLIN SAVINGS BANK, HIRAM H. THOMAS, HENRY GILSDORFF, *et al.*

} *In Chancery.*

---

SWIFT, CAMPBELL and JONES,
*Solicitors for Appellants.*

ROBERT B. KENDALL,
*Solicitor for Appellees.*

Pleas in the Circuit court of the United States of America for the Northern district of Illinois in the Northern division thereof, held at the United States court rooms in the city of Chicago in the district aforesaid before the Honorable Henry W. Blodgett, Judge of the District court of the United States for the Northern district of Illinois, on Monday the 10th day of August, in the July Term of said court, in the year of our Lord one thousand eight hundred and ninety-one and of our Independence, the one hundred and sixteenth year.

WM. H. BRADLEY,
*Clerk.*

Robert C. Taylor, Katherine Taylor and Margaret Taylor
*vs.*
Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor and Ira Scott
and
Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor
*vs.*
Franklin Savings Bank, Hiram H. Thomas, Ira Scott, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Robert Taylor, Katherine Taylor and Margaret Taylor.

*In Ch*
*Bill.* Bill filed Dec. 1, 1884.

*Cross Bill.*

NORTHERN DISTRICT OF ILLINOIS, ss.

Be it remembered that on the 17th day of March, 1885, there was filed in the office of the clerk of the Circuit court of the United States for the Northern district of Illinois at Chicago, in said district, a bond for costs and a transcript of record from the Superior court of Cook county, Illinois, in said above entitled cause, which said bond and transcript are respectively in words and figures following, to-wit:

Be it remembered that heretofore, to-wit: On the first (1st) day of December in the year of our Lord one thousand eight hundred and eighty-four there were filed in the office of the clerk of the Superior court of Cook county a certain bill of complaint and bond for costs, which are in words and figures, as follows, to-wit:

IN THE SUPERIOR COURT OF COOK COUNTY.

July Term, 1884.

TO THE HONORABLE, THE JUDGES OF THE SUPERIOR COURT OF COOK COUNTY, IN CHANCERY SITTING:

Your orators and oratrices, Frank C. Taylor, Jr., of the age of nineteen years or thereabouts, Maria L. Taylor, Jr., of the age of seventeen years or thereabouts, Josephine S. Taylor of the age of fifteen years or thereabouts, Alexander Taylor of the age of nine years or thereabouts, Robert C. Taylor of the age of six years or thereabouts, Katherine Taylor of the age of five years or thereabouts, and Margaret Taylor of the age of three months or thereabouts, minors, by their next friend John Q. Wells, respectfully represent that on or about the 13th day of September, A. D. 1873, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann commenced proceedings in the Circuit court of Cook county, against Frank C. Taylor, Maria L. Taylor, Ira Scott, Francis B. Peabody, the Franklin Savings Bank of Pawtucket, state of Rhode Island, Francis S. Howe, Charles H. Mulliken and your orators and oratrices, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, and Alexander Taylor for the purpose of establishing a Mechanics Lien upon Lot 4, in Block

16, in Bushnell's Addition to Chicago, in favor of the said petitioners, alleging, among other things, that on or about the 13th day of June, 1871, Maria L. Taylor, wife of said Frank C. Taylor, and mother of these complainants, being seized in fee simple of the above described premises did by her deed, her said husband joining, convey said premises to one Ira Scott in trust for herself, her said husband, and children. And that the said Maria L. Taylor and Frank C. Taylor, being alive, sometime in the month of March, 1872, acting in concurrence and with the approval of said Ira Scott, and in conformity with the power vested in them by said deed of trust, employed the said petitioners to prepair plans, drawings and specifications for, and to construct a certain block of five houses at the corner of Maple and Dearborn streets, Chicago, on the above described premises and that the said buildings were completed by the petitioners on or about the 15th day of July, A. D. 1873, at a total cost of $54,000 as required by said Frank C. and Maria L. Taylor in concurrence, and with the approval of the then trustee, and that there was an unpaid balance due the said petitioners of about $9,988.38. And praying for a sale of said premises to satisfy the same, pursuant to the statute.

To which petitions answers were put in by Francis S. Howe, The Franklin Savings Bank of Pawtucket, Charles H. Mulliken, George Taylor and Ira Scott, disclaiming all personal knowledge or information of the several things contained in said petitions and relating to the contract for work, labor and materials alleged in said petition as made between said petitioners and said Frank C. Taylor, or the terms of said contracts or the sums paid thereon, or the balance due said petitioners or anything relating thereto, save as the same appeared and were set forth in said petitions, and said defendants neither admitted or denied said matters or any of them, but prayed strict proof thereof.

And further answering said defendants admitted that their said co-defendants Frank C. and Maria L. Taylor executed the said deed of trust mentioned in said petitions to said Ira Scott and Francis Peabody his successor in trust. The said Maria L. Taylor being the owner of the premises therein described.

That the said Scott and Peabody afterwards resigned their positions as trustees and that thereupon the said Frank C. Taylor and Maria L. Taylor brought a suit in chancery in the Superior court of Cook county, in which said trustees and the then living children of the said Frank C. and Maria L. Taylor and all other parties interested in said trust were made parties, and in said bill said complainants prayed for the appointment of a new trustee, and that such new trustee might be authorized to mortgage or sell any part of said premises to the amount of $53,700, being the value and costs of certain improvements made thereon; and that afterwards, to-wit: August 19, 1873, said Superior court entered a final decree in said suit and thereby appointed said Mulliken as trustee in place of said Scott and Peabody, and authorized him as such trustee to mortgage or sell said premises to said amount for the purpose of paying off the cost of such improvements and of

reimbursing said Frank C. Taylor any money by him advanced towards such improvements, as would fully appear by the records of said court.

That said Mulliken accepted said trust, and afterwards, to-wit: August 23, 1873, in accordance with said decree, executed four trust deeds in the nature of mortgages, to said Francis S. Howe, trustee, for $9,000 each upon sub lots 1, 2, 4 and 5 of said Lot 4 Block 16, to secure the payment, five years from date thereof, of four notes of $9,000 each, payable to the order of the said Franklin Savings Bank. That all the proceeds of said mortgage were paid by said Mulliken in payment of said improvements or money advanced by said Taylor therefor as required by said decree. That a trust deed had been executed prior to said contracts by said Frank C. Taylor and Maria L. Taylor to Edward Brown, trustee, for the benefit of said bank for $30,000, which sum had been borrowed by said Frank C. Taylor to improve said Lot 4, and had been so applied. That said trust deed had been released by said Brown in the execution of said deeds to said Howe and the said trust deed to said Howe received in lieu thereof by said bank. And that it was not true, as alleged in said petitions, that said improvements were made with the assent or concurrence of said Scott as trustee, or that said Taylor in making said improvements acted as the agent of said Scott, or that said Scott in any way sanctioned or approved of said improvements; on the contrary, they, the said defendants alleged that said Taylor made said improvements and all contracts relating thereto in his own name and on his individual responsibility, and without consultation with or approval of the said Scott. And that said defendants denied that said trust estate was properly chargeable with the cost of said improvements or any part thereof except as it might be charged therewith under the decree of said court above set forth. That neither said trustee or said estate was properly subject thereto and that the same could only be charged therewith in the method provided in said deed of trust, as set forth in said bill; and that said defendants, Howe and The Franklin Savings Bank, claimed that said trust deed executed to said Howe was good and valid as against said claims of said petitioners, and prayed that the court would protect their interests therein.

And said defendants Mulliken and George Taylor further answered that said Mulliken as trustee sold one of said lots to said George Taylor, to-wit: Lot 3, of said subdivision under said decree for the purpose of raising money to pay for said improvements and in the manner provided by said trust deed, to-wit: In the written request of said Taylor and wife, and executed a deed therefor to said George Taylor, and said Taylor claimed that his said title derived under said sale was good and valid as against any claims of petitioners and prayed to be protected against such claims.

And said Frank C. Taylor and Maria L. Taylor answering, admitted the execution of said deed of trust to said Ira Scott and the employment of the petitioners by said Frank C. Taylor for the purpose charged in said petition.

And said Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, infants under the age of eighteen years, by Rufus C. Hall, their guardian *ad litem*, answered, claiming such interest in the premises mentioned in said bill of complaint as they were entitled to and submitted their interests to the protection of said court, to which several answers, replications were filed by said petitioners and issue having been joined, said cause was brought on for hearing before the Honorable John G. Rogers, one of the Judges of this court, and a jury on the 14th day of July, 1874, when the jury found by their verdict in favor of said petitioners as follows: Henry Gilsdorff $6,585.77, J. B. Sullivan $1,282.91 and F. & E. Baumann $1,-120, and thereupon the defendants moved the court for a new trial for the following reasons:

1st. The verdict of the jury was against the evidence.

2nd. The court erred in refusing to give to the jury proper instructions asked for by defendants.

3rd. The court erred in giving proper instructions asked for by the plaintiffs and objected to by defendants which motion the court overruled and entered judgment on said verdict in favor of said petitioners.

And your orator and oratrices further show that the said petitioners falsely represented that the said trust deed contained the following provisions: "That the buildings and improvements then standing on said premises might be removed and the whole or any part of said premises might be built upon or improved for the purpose of providing revenue, and that during the joint lives of said Frank C. Taylor and Maria L. Taylor, they should have the general management of said premises, acting in concurrence and with the approval of said Ira Scott, his successor or successors in trust, and under the restrictions and limitations in said deed contained. And that the said deed gave to the said Frank C. and Maria L. Taylor, the general management of said premises, and that for the purposes of building upon or improving said premises, power was given to sell any portion of the premises, or to mortgage the same to secure any loan for that purpose, and upon the hearing of the said cause the said petitioners exhibited to the court what they claimed and pretended was a true and substantial reproduction or copy of the said deed of trust, to the effect as set forth in their said petitions and claims, and thereby made it appear to the court that the same was true, and that the original of said trust deed and the record thereof had been destroyed, and thereby misled and deceived the court into the belief that the said trust deed contained the powers aforesaid, and thereby obtained the decree of said court as aforesaid.

While in fact and in truth the said deed of trust contained no such powers, but on the contrary contained the following provision: That the said Ira Scott or his successor or successors in trust shall bargain, sell and convey a portion of said premises for the purpose of procuring funds to build upon or improve the remainder thereof, during the joint lives of the said Frank C. and Maria L. Taylor, upon their joint written request, and such request shall be signified by their joining with such trustee in the execution of the deed or deeds of conveyance, for such price or prices and upon such terms as the said Ira Scott or his successors shall deem fit and proper for the purpose of obtaining funds to build upon and improve the remainder of said premises. And said Ira Scott or his successors in trust shall at once with the proceeds of such sale, erect on that portion of said premises remaining unsold, such buildings and improvements as said Frank C. and Maria L. Taylor jointly shall direct, or in case said Maria L. Taylor shall survive said Frank C. Taylor, as said Ira Scott shall deem best, provided always that no charge, lien or encumbrance on said premises or any portion thereof shall be thereby created. Which said deed of trust was not in fact lost or destroyed, but as your orators and oratrices believe and charge the fact to be, was through fraud and with the intention to deceive said court and defraud your orator and oratrices, mislaid, secreted and misrepresented, without the knowledge or consent of these complainants and in violation of their rights in the premises. The said deed of trust being then and now in existence, and was of record in the Recorders' office of Cook county, Illinois, in book 673 of deeds, page 1, having been recorded in said office June 15, 1871, and was re-recorded in said office July 3, 1877, in book 625 of records, page 287, a true copy of which said deed is hereto attached, marked Exhibit A, to which for greater certainty, reference is hereby made.

Your orators and oratrices respectfully represent that subsequent to the rendition of said decree by said court, to-wit: March 19, 1875, the said Frederick and Edward Baumann, Henry Gilsdorff and James B. Sullivan assigned by proper conveyance all their interests in and to said decree and all rights which they had acquired by reason thereof, to the said Franklin Savings Bank, and the said Franklin Savings Bank, so being the owner of said decree, did on, to-wit: July 15, 1881, procure the said premises to be sold by Thomas G. Windes, one of the masters in chancery of said Circuit court, in satisfaction of said decree, at which sale one Hiram H. Thomas, president of said Franklin Savings bank, for it and on its behalf purchased the said premises for, to wit: $12,987.92; and the said master in chancery subsequently, on to wit: the 24th day of October, 1882, executed his deed, conveying the hereinbefore described premises to said Thomas.

And your orators and oratrices charge that the said Hiram H. Thomas still holds the said premises in trust for said Franklin Savings bank and not otherwise, and that he had notice of the powers, restrictions and limitations contained in said deed of trust by reason of the same being of record as aforesaid, and was advised that said deed

of trust contained no provision, nor conferred any authority or power whatever upon said Scott as trustee, or otherwise, or in conjunction with said Frank C. and Maria L. Taylor to make any contract or incur any liability whatever which would subject said premises, so conveyed to said Scott, to the payment thereof.

But on the contrary expressly prohibited said trustee and all others, from creating any lien, encumbrance or charge on said premises under any circumstances, or for any purpose.

These complainants are informed and believe that it is true as stated in said answer of said Franklin Savings Bank and others, as hereinbefore set forth, that said Scott and Peabody did resign their positions as trustees under said trust deed, and that subsequently said Frank C. Taylor and Maria L. Taylor brought suit in this honorable court on the chancery side thereof, for the purpose of having a new trustee appointed, and authorized to mortgage or sell any part of said premises to the amount of $53,700 being the value and cost of certain improvements made thereon. And that subsequently, on, to-wit: August 19, 1873, a final decree was entered in said suit wherein said Mulliken was appointed trustee in place of said Scott and Peabody, and authorized as such to mortgage or sell said premises for the purpose of paying off the costs of such improvements and reimbursing said Frank C. Taylor any money by him advanced towards said improvements. And that said Mulliken accepted said trust and executed certain deeds of trust to said Howe to secure the payment of four notes of $9,000 each to said Franklin Savings Bank.

These complainants are further informed and believe that on the hearing of said cause, a paper was exhibited which purported to have been established by the decree of this honorable court as a true and correct copy of said deed of trust, the said decree having been previously entered as appears by the records of this court, on the 29th day of March, 1873, in a proceeding commenced therein on the 30th day of January, 1873, wherein it was alleged that said original trust deed and the record thereof were destroyed in the fire of October 8th and 9th, 1871. And that the court was misled thereby into the belief that it had the power under said deed of trust to enter said decree and confer upon said Mulliken the power and authority aforesaid.

Your orators and oratrices show unto your honors that bills of review were filed in this court by a part of these complainants, in each of said cases on the 4th day of March, 1879, against, among others the said Howe as trustee, etc., and said Franklin Savings Bank, wherein it was alleged that subsequent to the entry and enrollment of said decree above referred to, it had been discovered that the deed of trust so alleged to have been destroyed had not been destroyed by said fire, but had come into the possession of said complainants, and on the trials of the issue raised by said bills of review the same was exhibited and offered in evidence, and considered by the court as newly discovered evidence not possible for the complainants to have produced on the hearing on said original bills above referred to. And the court found the allegations of said bills of review to be true,

and the issues therein raised in favor of said complainants, and that said deed of trust so made by said Maria L. Taylor and Frank C. Taylor on the 13th day of July, 1871, to Ira Scott, trustee, was not destroyed by fire on October 8th and 9th, 1871, or at any time. And that the said deed of trust had come into the possession of the complainants in said bills of review, who had produced the same. That the said deed of trust was newly discovered evidence, not possible for said complainant to have produced on the hearing on said original bills of complaint above referred to. That the decrees entered and enrolled in the said original causes on the 29th day of March, 1873, and 19th day of August, 1873, respectively were erroneous, and that the proceedings and said causes should be reviewed and the said decrees reviewed, reversed and set aside, and the said original bills of complaint dismissed.

Your orators and oratrices are informed and believe, and charge the fact to be, that the said paper purporting to be a true copy of said deed of trust so exhibited by said petitioners on the trial of said Mechanics Lien suit, for the purposes aforesaid, was the same, or a copy thereof, as that so erroneously decreed to be, by said decrees of March 29, 1873, and August 19, 1873, respectively, a true copy of said deed of trust.

Your orator and oratrices further show unto your Honors that under and by virtue of said deed of trust, they are interested persons in said premises and are entitled to have their rights protected from the wrongful acts of others by which it is attempted to dispossess and cut off their said rights through said fraudulent and wrongful proceedings. And they expressly charge that under the circumstances aforesaid, the said decree so fraudulently obtained as hereinbefore mentioned, ought to be set aside and vacated, and your orators and oratrices ought not to be precluded or in any manner affected thereby.

For all which errors and imperfections in said judgment or decree of said court, by reason of the lack of power or authority in said Frank C. Taylor, Maria L. Taylor and said Ira Scott, trustee, to encumber or create the lien or charge mentioned in said decree, on said premises, or any part thereof, in favor of said petitioners, your orators and oratrices have brought this their bill to be relieved in the premises.

For as much therefore as your orators and oratrices are without remedy in the premises except in a court of equity, and to the end that the said Henry Gilsdorff, James B. Sullivan, Frederick and Edward Baumann, Ira Scott. Frank C. and Maria L. Taylor, The Franklin Savings Bank, of Pawtucket, Rhode Island, Charles H. Mulliken and Hiram H. Thomas, who are made parties defendant to this bill may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby waived; and that the said decree may be set aside and annulled by this Honorable court and decreed to be fraudulent and void and of no effect, and that your orator and oratrices may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

May it please your Honors to grant the writ of summons in chancery, directed to the said Sheriff of Cook county, commanding him that he summons the defendants, Henry Gilsdorff, James B. Sullivan, Frederick and Edward Baumann, Ira Scott, Frank C. and Maria L. Taylor, The Franklin Savings Bank, of Pawtucket, Rhode Island, Charles H. Mulliken and Hiram H. Thomas to appear before the said court on the first day of the next January Term thereof to be held at the court house in Chicago in the county of Cook aforesaid, then and there to answer this bill, etc.

FRANK C. TAYLOR, JR.,
MARIA L. TAYLOR, JR.,
JOSEPHINE S. TAYLOR,
ALEXANDER TAYLOR,
ROBERT C. TAYLOR,
KATHERINE TAYLOR,
MARGARET TAYLOR,
By their next friend,
JOHN Q. WELLS.

MILLARD R. POWERS,
*Solicitor for Complainants.*
H. B. HURD,
*Of Counsel.*

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

IN CHANCERY.

*The joint and several answer of Henry Gilsdorff, James B. Sullivan and Frederick and Edward Baumann, four of the defendants to the bill of complaint of Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants, who sue by John Q. Wells, their next friend.*

These defendants respectively, now and at all times hereafter, saving to themselves all benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

They admit that on or about the 13th of September, A. D. 1873, they commenced proceedings in the Circuit court of Cook county against Frank C. Taylor and the other persons named in said bill, for the purpose of establishing mechanics liens upon Lot 4 in Block 16 in Bushnell's Addition to Chicago, and that, among other things, they alleged what is set forth in said bill.

They admit that Francis S. Howe, the Franklin Savings bank, of Pawtucket, Charles H. Mulliken, George Taylor and Ira Scott filed answers to said petition for mechanics lien, but these defendants cannot now remember what said answers contained, and they neither admit nor deny the allegations of the bill to that effect, and leave complainants to make strict proof thereof.

These defendants admit that said Frank C. and Maria L. Taylor filed their answers as set forth in said bill; and that Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, infants, filed their answer, by their guardian *ad litem*, as alleged in said bill. They admit that replications were filed to said answers, and that on a trial before Judge Jno. G. Rodgers and a jury, on the 14th of July, 1874, a verdict was found in favor of these defendants, as set forth in the bill, and that, after a motion for a new trial had been overruled, the said Circuit court entered judgment on said verdict in favor of these defendants.

These defendants deny that they made any false representations concerning the said trust deed of Frank C. and Maria L. Taylor to Ira Scott, or the provisions contained therein.

They admit that at the hearing of said mechanics lien suit they exhibited to the court what purported to be a copy of said deed of trust, but they deny that they did thereby mislead the said Circuit court. And these defendants say, that at the March term, A. D. 1873, of the Honorable Court said Frank C. and Maria L. Taylor exhibited in this court their certain petition under an act of the general assembly of the state of Illinois, entitled "An act to remedy the evils consequent upon the destruction of any public records by fire or otherwise," commonly called the "Burnt Record Act," approved and in force April 9, A. D. 1872, in which petition said Ira Scott and all the complainants to the bill, filed in the present cause, who were then living, and "All whom it may concern" were parties defendant; that in said petition it was prayed that the title to the real estate conveyed by said trust deed be established and confirmed, and that said trust deed be restored of record and be established and confirmed to have been, and to be, same as a certain exhibit to said petition, marked "Exhibit A."; that all the defendants to said petition were properly brought into court; that those defendants who were minors were properly represented by a guardian *ad litem*, who filed an answer for them; that testimony was taken before B. A. Magruder, Esquire, Master in Chancery of this court, whose report was afterwards filed in and approved by this court, and that on the 29th day of March, A. D. 1873, a decree was entered in said cause in this court restoring the title to said trust estate and establishing and con-

firming said trust conveyance to have been, and to be, the same as said "Exhibit A." And these defendants aver that the paper exhibited to said Circuit court by them, as a copy of said trust deed, was a copy of said "Exhibit A.," so found by this court to be the same as said original trust deed. And these defendants claim the same benefit from this answer as if they had pleaded the several matters herein stated, touching the said petition under said "Burnt Record Act," the answers thereto, the proceedings under the same, and the said decree of this court, as if they had pleaded the said several matters.

And these defendants aver that the principal evidence taken before said master in chancery, and on which said decree was founded, was the testimony given by said Frank C. Taylor, the father of said complainants and one of the grantors in said trust deed; that being duly sworn before said master, said Frank C. Taylor, among other things, upon his oath, said: "My wife and I executed a trust to Ira Scott, and said 'Exhibit A' is a copy of it; I have spent a great deal of time over it and given it a great deal of thought, and have conversed frequently and at length with all the parties who ever knew anything of the original, and I am of the opinion that 'Exhibit A' is, in substance, a correct copy of the original; my recollection is quite clear and distinct as to the terms of the original, of which 'Exhibit A' is a copy. 'Exhibit A' I consider a correct copy of the original. The trust deed was delivered to Ira Scott originally, and recorded, and was, I believe, destroyed in the fire of October 9, 1871. I have examined all my own papers; do not know where said papers and deeds are, and believe them to have been burned in said fire."

These defendants further say that in the proceeding for the substitution of Charles H. Mulliken as trustee in place of said Scott, mentioned in said bill, and in which a reference was taken to said B. D. Magruder, Master in Chancery, to take evidence, said Frank C. Taylor again, upon his oath, testified that said "Exhibit A." was a correct copy of said trust deed, and he moreover, upon his oath, said that said trust deed authorized said Scott and his successors to build upon and improve the premises, and for that purpose to borrow money and execute mortgages, and that said trust deed was destroyed by fire.

And these defendants do, and will, insist that if said Circuit court was misled into the belief that said trust deed contained the powers stated by the petitioners in said mechanics lien suit the court was misled by the decree of this court in said "Burnt Record" proceedings, and not by these defendants; that if those statements of the powers vested in said trust deed were not true they were based on false testimony given under oath by the father of said complainants.

These defendants have no personal knowledge of what said original trust deed contained, and therefore neither admit nor deny the allegations of said bill to that effect, but leave complainants to make strict proof thereof; if this court should hold that they were not estop-

ped by said decree of this court establishing and confirming said trust deed.

These defendants have no personal knowledge whether said deed of trust was or was not destroyed, but they insist that if the same was through fraud, and with intention to deceive said court and complainants, mislaid, secreted and represented, without the knowledge or consent of complainants, and in violation of the rights, such fraud, misrepresentation and violation of the rights of complainants was perpetrated by said Frank C. Taylor, the father of complainants, and without the knowledge, consent or connivance of these defendants.

These defendants have no knowledge or information touching said original of said trust deed, and therefore neither admit nor deny the correctness of the alleged copy attached to said bill; but they again insist that complainants are estopped from denying the correctness of the copy of said trust deed introduced in said mechanics lien suit by the said decree of this court of March 29, A. D. 1873.

These defendants admit that they assigned all their interest in said decree of said Circuit court to the said Franklin Savings Bank, but they have no knowledge of the further proceedings under said decree since such assignment.

These defendants deny that the decrees of this court in the "Burnt Record" proceeding, and in the proceeding to substitute said Mulliken were ever set aside.

And these defendants do, and will, insist that although the alleged copy attached to said bill should be a correct copy of said trust deed, yet the said decree of the Circuit court should not for that reason be set aside; that said decree did not depend solely on the construction of the powers contained in said trust deed, and that the decree would have been the same even if the trust deed contained all the provisos set forth in the copy attached to the bill.

And these defendants aver that the said trust estate was created by said Maria L. Taylor, instigated by said Frank C. Taylor, for the purposes of fraud, said Frank intending thereby to erect valuable buildings and improvements on said real estate without the inconvenience of paying for the same, and in this way to enjoy the comforts of a handsome homestead and ample rent roll at the expense of trusting mechanics and over confident capitalists; that said Frank has, ever since its creation, been the sole manager of said alleged trust estate, appropriating the rents and profits and endeavoring to prevent anything that was ever invested in said estate by third persons from being drawn out again.

And these defendants aver that the assignment by them of said decree of the Circuit court was without recourse, and that no decree should, for that reason, be rendered in this cause against these defendants.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged without this, that there is any other matter, cause or thing in the said complainants said bill of complaint contained, material or necessary,

for these defendants to make answer unto, and not herein well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf expended.

HENRY GILSDORFF.
JAMES B. SULLIVAN.
FREDERICK BAUMANN.
EDWARD BAUMANN.

JOHN WOODBRIDGE and GEO. F. BLANKE,
*Solicitors and of Counsel.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

SUPERIOR COURT OF SAID COOK COUNTY.

IN CHANCERY.

Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor and Margaret Taylor, by John Q. Wells, their next friend,
*vs.*
The Franklin Savings Bank, of Pawtucket, Rhode Island, and Hiram H. Thomas impleaded with Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Ira Scott, Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken.

*Petition for removal to Federal Court.*

TO THE HONORABLE JUDGES OF SAID SUPERIOR COURT, IN CHANCERY SITTING:

Your petitioners, The Franklin Savings Bank, of Pawtucket, Rhode Island and Hiram H. Thomas, two of the defendants in the above entitled cause, respectfully show to your Honors that the matter and amount in dispute in the above entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars ($500).

That all of the complainants in said cause, and John Q. Wells, the next friend of said complainants, were, at the time of the commencement of said suit, and still are, citizens of the state of Illinois; that your petitioners were, at the time of the commencement of said suit, and still are, citizens of the state of Rhode Island; that the defendant, Ira Scott, was, at the time of the commencement of said suit, and still is, a citizen of the state of Michigan, and all of the other defendants in said suit were, at the time of the commencement thereof, and still are, as your petitioners are informed and believe, citizens of the state of Illinois.

Your petitioners further aver that there is in said suit a controversy wholly between said complainants and your petitioners, and which can be fully determined as between them; that no relief is sought in said suit against any of the defendants except your petitioners, and that as to the defendants, Ira Scott, Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, their interest in the controversy in said suit, so far as any interest exists, is upon the same side of the controversy as the interest of the complainants in said suit, and that the other defendants to said suit are mere nominal and unnecessary parties thereto.

And your petitioners offer herewith a bond with good and sufficient surety for their entering in the Circuit court of the United States for the Northern district of Illinois, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto.

And your petitioners pray this Honoroble Court to proceed no further in said cause, except to make the order of removal as herein prayed, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit court of the United States in and for said Northern district of Illinois.

And your petitioners will ever pray.

FRANKLIN SAVINGS BANK,
Of Pawtucket, Rhode Island.
HIRAM H. THOMAS.
By SWIFT & CAMPBELL,
*Their Solicitors.*

SWIFT & CAMPBELL,
*Solicitors for Petitioners.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

SUPERIOR COURT OF SAID COOK COUNTY.

IN CHANCERY.

Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor and Margaret Taylor, by John Q. Wells, their next friend,

*vs.*

The Franklin Savings Bank, of Pawtucket, Rhode Island, and Hiram H. Thomas impleaded with Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Ira Scott, Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken.

Know all men by these presents that we, William H. [illegible] principal, and David Campbell, as surety, both of the city of Chicago, county of Cook and state of Illinois, are hereby held and firmly bound unto Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor and Margaret Taylor in the penal sum of five hundred dollars ($500) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves jointly and severally by these presents.

Witness our hands and seals this twenty-fifth (25th) day of February, A. D. 1885.

The condition of this obligation is such that, whereas The Franklin Savings Bank, of Pawtucket, Rhode Island, and Hiram H. Thomas are defendants in a certain suit now pending in the Superior court of Cook county, Illinois, upon the chancery side thereof, in which suit Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor and Margaret Taylor, by John Q. Wells, their next friend, are complainants, and The Franklin Savings Bank, of Pawtucket, Rhode Island, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Ira Scott, Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken are defendants.

And whereas said The Franklin Savings Bank, of Pawtucket, Rhode Island, and Hiram H. Thomas, have, upon the day of the date hereof, filed in said Superior court in said cause a petition for the removal of said cause to the Circuit court of the United States for the Northern district of Illinois.

Now, therefore, if the said The Franklin Savings Bank, of Pawtucket, Rhode Island, and Hiram H. Thomas shall enter in the said Circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise in full force and virtue.

WILLIAM H. SWIFT. [SEAL]
DAVID CAMPBELL. [SEAL]

Approved February 27, 1885.

H. M. SHEPPARD,
*Judge of Superior Court, Cook County.*

Afterward, to-wit: On the 16th day of July, 1885, came Ira Scott, by his solicitors, and filed in said clerk's office his answer to the bill in said entitled cause, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

Frank C. Taylor, *et al.*,
*vs.*
Henry Gilsdorff, *et al.*

*The separate answer of Ira Scott, one of said defendants to the bill of complaint in said cause.*

espondent, saving all benefit of exception or otherwise to the nd insufficiencies in said bill contained, for answer thereto, ng says:

That respondent has not resided in said state of Illinois since about the 6th day of April, 1880, when he removed to the state of Michigan, where he has since resided.

That respondent has had no concern or connection with the lands in said bill mentioned since about the 19th day of August, 1873.

Respondent, further answering, says that he is a stranger to the matters in said bill stated, does not admit the same, or any of the same, to be true in manner and form as therein set forth, but leaves the said complainants to make such proof in that behalf as they may be able to make.

And respondent, further answering, says that whatever acts or things respondent at any time has done or performed in or about any of the matters in said bill referred to, the same have been done and performed in good faith, and, as respondent is advised, in full accordance with law and equity, and in such a manner as to give complainants no cause for complaint as against this respondent; and respondent says that so far as the said bill states, or may be construed to state, any misconduct or neglect of duty on the part of this respondent, touching the matters therein referred to, the same is wholly untrue.

And respondent, having answered the aforesaid bill, so far as he has any concern, as fully and completely as the vague and insufficient nature of its statements in that behalf calls for answer, prays to be hence dismissed with his reasonable costs and charges, etc.

PADDOCK & IDE,
*Solicitors for said Defendant.*

GEO. L. PADDOCK,
*Of Counsel.*

[Endorsed]: Filed July 16, 1885.

WM. H. BRADLEY,
*Clerk.*

Afterward, to-wit: On the thirteenth day of October, 1885, came Frank C. and Maria L. Taylor and filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to-wit:

APPEARANCE OF FRANK C. TAYLOR AND MARIA L. TAYLOR.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Frank C. Taylor, Jr., *et al.*,
*vs.*
Henry Gilsdorff, *et al.* } *In Chancery.*

We hereby and herein waive the service of process of such summons, or subpœna, and enter our several appearances in the above case and consent that a default may be taken against us for want of answer to the bill of complaint and a trial had at any time hereafter.

FRANK C. TAYLOR.
MARIA LOUISE TAYLOR.

[Endorsed]: Filed October 13, 1885.

WM. H. BRADLEY,
*Clerk.*

On the same day, to-wit: On the 18th day of March, in the adjourned March Term of said court, 1887, in the record of the proceedings thereof in said entitled cause before Honorable Walter Q. Gresham, Circuit Judge, is the following entry, to-wit:

ORDER.

Order entered March 18, 1887.

Frank C. Taylor, Jr., *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

And now come the complainants by Robert B. Kendall their solicitor, and come also the defendants by William H. Swift, one of their solicitors, and the withdrawal of Millard R. Powers and Harvey B.

Hurd as solicitor and counsel for the complainants having been filed, upon motion of the said Robert B. Kendall it is ordered that his name be substituted as solicitor for said complainants in place of the said Millard R. Powers and Harvey B. Hurd.

And the said complainants by their said solicitor Robert B. Kendall confess the demurrer of the defendants heretofore filed herein, and upon his motion it is thereupon ordered that the bill of complaint herein be dismissed as to the following named complainants, viz: Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, without prejudice and that they be made defendants thereto; and it is further ordered that the said other complainants, viz: Robert C. Taylor, Katherine Taylor and Margaret Taylor have leave to file an amended bill of complaint herein and to make the said Frank C. Taylor, Jr., Maria L. Taylor, Josephine S. Taylor and Alexander Taylor defendants thereto.

On the same day, to wit: On the 18th day of March, 1887, came Robert C., Katherine and Margaret Taylor, by their next friend, John Q. Wells, and filed in said clerk's office their amended bill in said entitled cause, which said amended bill is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, OF THE NORTHERN DISTRICT OF ILLINOIS:

Robert C. Taylor, Katherine Taylor and Margaret Taylor, minors and citizens of the state of Illinois, by their next friend, John Q. Wells, a citizen of the state of Illinois, bring this their amended bill of complaint against the Franklin Savings Bank, a corporation created under and by virtue of the laws of the state of Rhode Island, and which is a citizen of the state of Rhode Island, Hiram H. Thomas, of Pawtucket, in the state of Rhode Island, a citizen of the state of Rhode Island, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Sr., Maria L. Taylor, Sr., Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, (the said Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor being minors,) residents of Chicago, in said Northern district of Illinois, and all being citizens of the state of Illinois, and Ira Scott, a citizen of the state of Michigan.

And thereupon your orators complain and say, that heretofore, to-wit: On or about the 13th day of June, A. D. 1871, the said Maria L. Taylor, Sr., the mother of the complainants, was seized in fee simple of the following described land situate in the city of Chicago, county of Cook, and state of Illinois, to wit:

That part of Block sixteen (16) in Bushnell's Addition to Chicago, bounded and described as follows:

Beginning at a point on the east line of Dearborn street three hundred feet north of the south-west corner of said block; thence running north on the east line of Dearborn street one hundred and three (103) feet more or less to the north-west corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet, and thence west parallel with Maple street one hundred and fifty (150) feet to the place of beginning; the same being Lot four (4), in the plat of subdivision of Block sixteen (16) in Bushnell's Addition to Chicago, recorded in the recorder's office of said county of Cook in book 165 of maps, page 51.

That being so seized the said Maria L. Taylor together with the said Frank C. Taylor, her husband, the father of these complainants, on or about the date aforesaid, to wit: the 13th day of June, 1871, executed and delivered to the said Ira Scott, one of the defendants herein named, a certain deed of conveyance of said land, in fee, under their hands and seals, *but in trust* nevertheless, to hold upon the specific trusts, as expressed in the said deed, a copy of which said deed is hereunto attached, marked "Exhibit A." and made a part of this amended bill of complaint.

That in and by said deed, it was provided that in case of the death, absence, inability, or refusal to act, of the said Ira Scott, then Francis B. Peabody, of said Chicago, should be and he was by said deed, appointed and made successor in trust to the said Ira Scott, with like powers and authority; all of which will more fully and at large appear by reference to said deed, now in the possession of these complainants, ready to be produced and proved as your Honors shall direct, and to which for greater certainty these complainants pray leave to refer.

That afterwards, to-wit: On or about the 13th day of June, A. D. 1871, the said deed was duly acknowledged by the said Maria Louise Taylor and Frank C. Taylor, before Timothy J. Mapes, a notary public in and for said city of Chicago in said county of Cook, as by his certificate as such notary, endorsed upon said deed, under his hand and notarial seal will more fully appear.

That afterwards, to wit: On the 15th day of June, A. D. 1871, said deed was duly filed for record and was recorded in the recorder's office for said county of Cook, in book 673 of deeds, page 1, as by the certificate of Norman T. Gassette, the recorder of said county, endorsed thereon and signed by the said recorder will appear.

These complainants further show, that at the date of the execution and delivery of said deed, to Ira Scott, as trustee, the said Frank C.

Taylor and Maria L. Taylor, the father and mother of the complainants, were in the occupation of said land and its buildings and appurtenances, as a place of residence and homestead, and that they thereafter continued so to occupy and use the same, pursuant to the terms of said trust, until the said buildings were destroyed by fire in the great conflagration of October 8th and 9th 1871.

That afterwards, to-wit: On or about the 26th day of June, A. D. 1872, the said Frank C. Taylor borrowed of the said Franklin Savings Bank, one of the defendants herein, the sum of thirty thousand dollars ($30,000), upon his promissory note of that date, payable to the order of George N. Newell, treasurer, (the said Newell being at that time the treasurer of the said savings bank) on or before the 26th day of June, A. D. 1873, with interest thereon at the rate of ten (10) per cent. per annum; and as security for the payment of said note the said Frank C. Taylor and Maria Louise Taylor, on or about the 26th day of June, A. D. 1872, executed a deed of trust, in the nature of a mortgage, of said real estate to one Edward Brown, as trustee, purporting to convey to said Brown the unencumbered fee simple in said land, as security for said loan, but these complainants show unto your Honors that at the date of said trust deed, the title to said land had become vested in the said Ira Scott, as trustee, under said first described deed of trust, and that the said Frank C. and Maria L. Taylor had no power or authority to encumber the same; of which fact the said savings bank had due notice by the record of said deed.

These complainants further show, that they are informed and believe that at some time during the year 1872 and 1873 the said Frank C. Taylor improved the said trust estate by building or causing to be built upon said land, a block of five dwelling houses, which were completed some time during the month of June, A. D. 1873, at a cost of about $53,700.

These complainants further show, that they are informed and believe that some time before the maturity of said note of Frank C. Taylor for thirty thousand dollars ($30,000), the said Taylor being unable to pay the same, applied to the said Franklin Savings Bank for a time loan, thirty-six thousand dollars ($36,000), to be divided into four equal parts of nine thousand dollars ($9,000) each, to be secured by mortgage of one of said houses, to take the place of said loan of thirty thousand dollars ($30,000), and it was agreed between the said Frank C. Taylor and the said savings bank, that the said Taylor and wife should join with the said Scott, as trustee, in the execution of four trust deeds to Francis S. Howe, as trustee, each for the sum of nine thousand dollars ($9,000), each of said proposed trust deeds to convey one of the said dwelling houses, with the land upon which it stood, and that upon the execution and delivery of said new trust deeds the said note of thirty thousand dollars ($30,000) should be cancelled and given up.

Your orators further show, that they are informed and believe that the record of said deed to Ira Scott in the recorder's office of said County, had been destroyed by fire on the 8th or 9th of October, A.

D. 1871, and that the original deed had been lost or mislaid, and could not be found ; that the only abstract of the record title to said property in the possession of any of the parties interested therein failed to show anything of the terms of the said trust, and there was no evidence in the possession of any abstract makers in Cook county showing the terms of said trust, and the said Frank C. Taylor was advised by his lawyers that it was therefore necessary or expedient before said trustees could act under said trusts that the record thereof should be restored by a proceeding and decree under the statutes of Illinois, in such case made and provided, commonly known as the Burnt Records Act.

That thereupon the said Frank C. Taylor and Maria L. Taylor filed their bill or petition in the Superior court of said County, on the 30th day of January, A. D. 1873, (numbered 42,146 on the general docket of said Court) to establish and confirm said deed of trust to Ira Scott and to establish and confirm the title of said Scott, as trustee, and the title and interests of said petitioners, and of all other interested under said deed of trust in the land and premises therein described ; setting forth in their said bill a paper writing as and for the substance of said deed, and alleging that the original, thereof as well as the record had been lost or destroyed as aforesaid.

That the said Scott, Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor, the only children of the said Frank C. Taylor and wife, then in being, Edward Brown, trustee, as aforesaid, and the said Franklin Savings Bank, were made parties defendant to said petition, and that such proceedings were had in the matter of said petition ; that on or about the 29th of March, A. D. 1873, a decree was entered therein, in accordance with the prayer of said petition, establishing and confirming said paper writing as and for and in place of the original of said trust deed ; all of which will more fully appear by reference to the records of said court, to which records these complainants pray leave to refer ; a copy of which said petition, except "Exhibit A." and a copy of which said decree are hereto attached, marked, respectively, "Exhibit B." and "Exhibit C." are hereto attached and are made part of this amended bill.

But your orators show unto your Honors, that the said paper alleged to be or contain the substance of said trust deed, was not a true copy thereof, nor was it the same in substance, in this, that whereas the said deed of trust to Ira Scott contained provisions to the effect that no lien, encumbrance, or charge, should be created upon said premises in any event, or for any purpose, the said pretended deed contained a provision in effect, authorizing the said trustee to mortgage the said land, and nowhere forbade the encumbering or charging of said land for any purpose, nor to any extent, and that in other respects the said writing differed from the true deed, all of which will fully appear by reference to the decree in said cause, in which said pretended deed was fully set out, and to the original of said trust deed to Scott ; that it was not true as alleged in said bill that said deed of trust had been destroyed by fire, but it was true, as your orators be-

lieve, that at the time said suit was pending in the Superior court, the said deed was lost, mislaid, or secreted, and could not be found.

That afterwards, to-wit: On or about the 13th of June, A. D. 1873, the said Ira Scott, together with the said Frank C. Taylor and wife, made a subdivision of the land, in said deed of trust described, into five lots, numbered respectively, one (1), two (2), three (3), four (4), and five (5), which said subdivision was duly platted and the map thereof recorded in the recorder's office of said County on or about the 5th day of July, A. D. 1873, in book 5, of maps, page 24.

That afterwards the said Ira Scott and Francis B. Peabody, as his successor in trust, refused to act farther as trustee under the said deed of trust, and thereupon, to-wit: On or about the 23rd day of July, A. D. 1873, the said Frank C. Taylor and Maria L. Taylor, his wife, filed another bill in said Superior court, (numbered 44,331 on the general docket of said court,) praying for the appointment of a new trustee in place of the said Scott and Peabody, and that said new trustee have leave to sell a part of said trust estate for the purpose of reimbursing the said Frank C. Taylor for the cost of said building, and thereupon such proceedings were had therein; that on or about the 19th day of August, A. D. 1873, a decree was entered in said cause, appointing and making one Charles H. Mulliken the successor in trust to the said Scott, and further decreeing that the said Mulliken, as such trustee be authorized and empowered, out of any funds arising from the sale of said premises, or any part thereof, or from any loan made for that purpose, to pay the said Frank C. Taylor, all costs of said improvements not to exceed the sum of fifty-three thousand seven hundred dollars ($53,700), a copy of which decree is hereto attached, marked "Exhibit D," and is made a part of this amended bill of complaint.

That thereupon Ira Scott and Francis B. Peabody duly executed a deed of said property to the said Mulliken as their successor in trust, and the said Mulliken as trustee, and the said Frank C. Taylor and Maria L. Taylor, his wife, joined in the execution of four trust deeds to Francis S. Howe, as trustee, (since deceased,) whereby they undertook to convey to the said Howe lots numbered respectively one (1), two (2), four (4), and five (5) of the said subdivision made by the said Ira Scott, trustee, including four of said houses, to secure the payment of four promissory notes of even date, with said trust deed signed by the said Mulliken, as trustee, and by the said Frank C. Taylor and Maria L. Taylor, each of said notes being for the sum of nine thousand dollars ($9,000), and payable to the said Franklin Savings Bank, or order, at the Fourth National Bank, of Chicago, five years after date thereof, with interest at the rate of ten (10) per cent. per annum, payable semi-annually, which said trust deeds were dated August 23rd, A. D. 1873, and were recorded August 25th, A. D. 1873, in said recorder's office, in book 306, page 207; book 303, page 227; book 242, page 609, and book 242, page 614, respectively.

That after the execution and delivery of said notes and trust deeds to the said savings bank, the said bank caused the said note of Frank

C. Taylor for $30,000 to be cancelled and surrendered to him the said Taylor, and thereupon the said Edward Brown released to the said Taylor all interest acquired by said trust deed of June 26, 1872, and the said bank also advanced and paid the said Frank C. Taylor the balance in excess of the sum due upon his said note of $30,000, amounting to the sum of three thousand five hundred and nine dollars and ninety-five cents ($3,509.95).

That on or about the 10th day of November, 1873, the said Mulliken executed a deed to one Julia S. Taylor of lot No. three (3) in said subdivision, with one of said dwelling houses thereon, for the expressed consideration of fifteen thousand dollars ($15,000), in which deed the said Frank C. and Maria L. Taylor joined for the purpose of signifying their assent thereto.

That afterwards, to-wit: On or about the first day of January, A. D. 1874, the said Mulliken, as such trustee, and the said Taylor and wife, joined in the execution of another trust deed to said Howe, purporting to convey the whole of said lots one (1), two (2), four (4), and five (5) as security for the payment of a promissory note of the said Frank C. Taylor, Sr., to the order of the said savings bank for the sum of two thousand eight hundred and seventy-five dollars ($2,875), with interest as therein specified, said sum of money being the personal indebtedness of the said Frank C. Taylor to the said savings bank.

Your orators further show, that some time after the entry of the said decrees of said Superior court, the said deed of trust from the said Taylor and wife to Ira Scott was found and came into the possession of certain of the defendants hereto, and thereupon bills of review were filed in each of said suits in the Superior court by the said Frank C. Taylor, Jr., and Maria L. Taylor, Jr., by their next friend, against the other parties hereto, on the 26th day of April, A. D. 1878, setting up said trust deed as newly discovered evidence, and praying that said decree be reviewed, reversed, and set aside.

That the said Ira Scott, Francis B. Peabody, Edward W. Russell, as successors in trust of the said Francis S. Howe, deceased, Charles H. Mulliken and the Franklin Savings Bank, among others, appeared and answered said bills of review, and such proceedings were had therein; that on the 4th day of March, A. D. 1879, a decree was entered in each of said causes, finding that the said deed of trust to Ira Scott was not destroyed; that it was newly discovered evidence not possible for the complainants in review to have produced at the hearing of said original bills of complaint; that the decrees entered and enrolled on the 29th day of March, 1873, and August 26th, 1873, respectively, were erroneous and should be reviewed, reversed, and set aside; and said original bills (No. 42,146 and No. 44,331) were thereupon dismissed; but it was also therein decreed that nothing in said decrees, ordered or decreed, should deprive the said Franklin Savings Bank, or the said Edward W. Russell, as successor in trust to the said Howe, of any interests they, or either of them, might have in the said real estate, stating therein that the claims of said bank and

of said Russell had not been heard or adjudicated; all of which will more fully appear by reference to the records of the said Superior court in the said causes, and to which your orators pray leave to refer.

Your orators further show unto your Honors, that on or about the 13th day of September, A. D. 1873, the said Henry Gilsdorff filed his petition in the Circuit court of said Cook county against the said Frank C. Taylor, Maria L. Taylor, Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, The Franklin Savings Bank, Francis S. Howe and Charles H. Mulliken, for the purpose of establishing a mechanics lien upon the whole of said land and premises in favor of said petitioner for labor and materials used and furnished in the construction of said houses, and praying for the sale of said premises to satisfy the same, pursuant to the statute of the state of Illinois; that the said James B. Sullivan, Frederick Baumann and Edward Baumann were afterwards made parties plaintiff to said suit upon their intervening petitions therein filed, praying like relief.

That said petitioners alleged in their petitions that said labor and materials and services were performed, furnished and rendered pursuant to certain contracts entered into by said petitioners respectively, with the said Frank C. Taylor, and that in making said contracts the said Taylor was the duly authorized agent of the said Maria L. Taylor, and also agent of the said Ira Scott as trustee under said trust deed, and that such contracts were made pursuant to the powers granted to said trustee by the terms of the deed conveying the land to him in trust, as aforesaid. And said petitioners falsely represented in said petitions that in said deed to Ira Scott it was provided, among other things, that the building and improvements, then standing on said premises, might be removed, and the whole, or any portion thereof, might be built upon or improved for the purposes of providing revenue, and that during the joint lives of the said Frank C. Taylor and Maria L. Taylor they should have the general management of said premises, acting in concurrence with and with the approval of the said Ira Scott, or his successors in trust, and under the restrictions and limitations in said trust deed contained, whereas, in fact, the provisions in said deed contained relating to the erection of new buildings were to the effect only that the improvements then standing on said premises might be added to, altered, or removed, and new buildings erected thereon, *provided always there should be no incumbrance or charge created thereby on said premises*, and that the whole or a portion of said premises might be used for the purpose of deriving a revenue therefrom, and that the said trustee might bargain, sell, and convey a portion of said premises for the purpose of procuring funds to build upon or improve the remainder thereof, and that with the proceeds of such sale he should erect upon that portion of said premises remaining unsold such buildings and improvements as the said Frank C. and Maria L. Taylor should jointly direct, *provided always that no charge, lien, or incumbrance on said premises, or any part thereof, should thereby be created by said trustee.*

And your orators further show that such proceedings were afterwards had in said cause, that on or about the 14th day of July, A. D. 1874, a decree or judgment was entered therein upon a verdict of a jury finding that there was due the said Gilsdorff the sum of six thousand five hundred and eighty-five dollars and seventy-seven cents ($6,585.77); due the said Sullivan one thousand two hundred and eighty-two dollars and ninety-one cents ($1,282.91), and due the said F. and E. Baumann one thousand one hundred and twenty dollars ($1,120), and establishing liens upon said real estate for said sums and ordering a sale thereof to satisfy and pay the same.

Your orators are informed and believe that at the trial of said cause the said petitioners exhibited and put in evidence the pretended deed of trust that had been established by said decree of the Superior court on the 29th day of March, A. D. 1873, or a copy thereof, and thereby the court was misled as to the terms of trust, and thereupon erroneously instructed the jury that the said trust estate was subject to a lien under the statute, and thereupon the jury found the issues for said petitioners, as aforesaid; whereas, on the contrary, your orators insist that neither the said trustee nor any one had any power or authority to create such lien, and that it was expressly provided by the said deed creating said trust that no lien upon said premises should be created by the erection of buildings thereon, of which provisions the said petitioners had due notice, as aforesaid, by the record of said deed.

Your orators further show that the said decree was afterwards, to-wit: On or about the 19th day of March, A. D. 1875, sold or assigned by the said Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan to the said Franklin Savings Bank; and that, afterwards, to wit: On the 15th day of July, A. D. 1881, upon the application and request of the said Franklin Savings Bank, the said land and premises were offered for sale at public auction by Thomas H. Windes, one of the masters in chancery of the Circuit court of said Cook county pursuant to said decree, and were struck off as sold to the said Hiram H. Thomas, one of the defendants herein, who was at that time, and still is, as your orators are informed and believe, the president of the said Franklin Savings Bank, and who purchased said real estate at said sale for and in behalf of and in trust for the said savings bank, and not otherwise.

That afterwards, to wit: On or about the 24th day of October, A. D. 1882, the said master made his deed of said real estate to the said Thomas, that the said Thomas still claims and pretends to hold whatever interest he acquired by virtue of said master's deed, but in trust for the said Franklin Savings Bank, and not otherwise; and your orators charge that he became the purchaser at said sale with full notice of the terms of said trust created by said deed to Ira Scott.

Your orators charge that the decree, establishing the said lien in favor of said petitioners, was procured by misrepresentation and imposition upon said Circuit court in this, that the said court was misled and imposed upon by the production, as evidence, of said pre-

tended deed of trust as confirmed by the decree of the Superior court; that the said Franklin Savings Bank purchased said property after the original and true deed of trust had been discovered, and after the said decree, whereby said pretended deed had been established, had been reviewed, reversed, and set aside, and took an assignment of the said assignment from the said Gilsdorff and others, with full knowledge and notice of the terms of said trust, and of all the fraud with which said decree was tainted.

Your orators further show that the said Franklin Savings Bank on or about the 28th day of June, A. D. 1876, exhibited its bill of complaint in this Honorable Court against the said Frank C. Taylor and Maria L. Taylor, his wife, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Edward W. Russell, successor in trust of the said Francis S. Howe, and others, praying a foreclosure of said four trust deeds that had been made by the said Mulliken, as trustee, to the said Francis S. Howe as security for the said notes of the said Mulliken, trustee, and the said Frank C. and Maria L. Taylor for $9,000 each; and also for the foreclosure of said trust deed given to said Howe, as trustee, to secure payment of the note of Frank C. Taylor, Sr., for the sum of two thousand eight hundred and seventy-five dollars ($2,875), which bill of complaint is now upon the files of this court and is of record therein, and to which and the record thereof, in this court, these complainants pray leave to refer. That in said suit a guardian *ad litem*, was appointed by the court for all of the said infant defendants, and filed an answer therein, in the usual form, submitting the interests of said minors to the care and protection of this court; that a receiver was appointed in said cause to take possession of said property, and collect the rents thereof, etc., who thereupon took possession and collected such rents, etc.

That on or about the 31st day of May, A. D. 1877, said cause was referred to Henry W. Bishop, a master in chancery of this court, by an order of court duly entered therein, to take proofs therein and report the same to the court; and afterwards certain witnesses were examined before said master, and certain documents were introduced in evidence, among which was the said deed of trust to Ira Scott.

That thereupon, to-wit: On the 10th day of December, 1878, and whilst said suit was pending before said master, the said Franklin Savings Bank filed in said cause its supplemental bill of complaint, setting forth therein, among other things, the several proceedings aforesaid, that had been had in the Superior court of Cook county, the original and true deed of trust to Ira Scott, a copy whereof the complainant attached to its said supplemental bill, and made said copy a part thereof, and making the said Robert C. Taylor a defendant to said suit, (the said Robert C. Taylor having been born after the filing of said original bill); and in said supplemental bill prayed, among other things, the following alternate relief, namely: That said premises might be sold by and under the direction of this court, and the proceeds of such sale be applied to the payment of the amount

found due said bank, together with all costs and expenses of said suit, etc.

Or, if the court should find that the interest of the said infant defendants was not conveyed by the trust deeds sought to be foreclosed, then, in default of the payment of the amount found due said bank, that the interest of the said Frank C. Taylor, Sr., and Maria L. Taylor, Sr., under said trust deed to Ira Scott be first sold under the direction of this court, and the proceeds of such sale be applied to the payment of the amount due said bank, together with costs, etc., and if such sale should fail to satisfy the amount due, etc., then, that the court order said Charles H. Mulliken, as trustee, to sell all the interests of said infant defendants in said premises, or so much thereof as should be necessary to satisfy the balance then remaining unsatisfied of the amount then found due said bank, with costs, etc., and that in case said trustee should refuse to make such sale, then that the court direct the master in chancery of said court or some other person to make such sale; and the usual prayer for general relief.

These complainants show that the answer of said infant defendants to said supplemental bill was duly filed by their said guardian *ad litem*, and issue was joined thereon, but the master never made a report pursuant to the said order of reference, and there was never any hearing by the court upon the issues made by the pleadings in said cause, nor upon the evidence presented to the master, and the interests of the minors, who were party to said suit, as aforesaid, and the interests of any unborn children, who might become entitled to an interest in said real estate, by the terms of said trust, were never brought directly to the notice and care of this court, and were never duly considered.

Your orators further show that they are informed and believe, and so charge the fact to be, that said suit was pending for many months before said master; that, in the meantime, a large sum of money had accumulated in the hands of said receiver from the rents of said property; that an arrangement was made and entered into by and between the complainant and the said guardian, *ad litem*, on or about the 6th day of November, A. D. 1879, and while said cause was pending before the master upon said order of reference, to the following effect, to-wit: The said infant defendants to have one (1) of said houses free and clear from all said incumbrance and one-fourth ($\frac{1}{4}$) of the money remaining in the hands of said receiver at the final disposition of said cause, after deducting enough to settle the liens claimed by certain defendants for labor and material, the costs of court, and certain advances that had been made by the complainant for taxes upon said property, and all outstanding claims for taxes and insurance, and the complainant to have and hold the other three (3) houses, and it was thereupon agreed by said complainant and said guardian *ad litem*, that a decree of foreclosure and sale should be entered in said cause, and such division of the property as had been agreed upon should be made after the same had been sold pursuant to such decree.

That afterwards, to-wit: On the 30th day of April, A. D. 1880, pursuant to such arrangement, a decree of foreclosure and sale was entered in said cause, in which it was erroneously decreed, among other things, that the said trust deeds to Howe were a first lien upon said real estate, subject only to the said pretended mechanics liens, etc.; that the said trust estate be sold, discharged from all claims by or on behalf of any and all of the defendants (except the statutory right of redemption), and discharge from all trusts theretofore existing in favor of either of the defendants thereto, all of which will more fully appear by reference to said decree as enrolled in this court, and to which your orators pray leave to refer.

Your orators show that, pursuant to the said decree of foreclosure, the said lots numbered one (1), two (2), four (4), and five (5), together with the buildings thereon, were offered for sale by a master in chancery of this court, on the 16th day of June, A. D. 1880, and were struck off as sold to the said Franklin Savings Bank for the following sums of money, to-wit: Lot 1 for $15,000; lot 2 for $12,000; lot 4 for $12,000, and lot 5 for $12,000.

That the certificate of sale for said lot two (2) was thereupon, pursuant to the aforesaid arrangement between the said bank and said guardian *ad litem*, assigned by said bank to Orville Peckham, and by said Peckham was assigned to the said minors, viz: Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Katherine Taylor, and Robert C. Taylor, the children then in being of the said Frank C. Taylor and Maria L. Taylor; and that afterwards a deed of said lot was issued to them by the said master in chancery of this court, dated the 3rd day of November, A. D. 1881.

That deeds of said lots one (1), four (4), and five (5), were also issued by said master in chancery to the said Franklin Savings Bank.

That after payment of the claims and advances made by the said bank, prior to the appointment of the said receiver for taxes and insurance, etc., as provided by the terms of said agreement, between said guardian *ad litem* and said bank, there remained in the hands of said receiver the sum of $5,252.41, which sum, by an order of this court entered in said cause on the 14th day of July, A. D. 1880, was paid over to the said bank, to be credited on the deficiency found due by the masters report of said sale, but whether one-fourth of said balance was turned over for the use of said minor defendants or not, pursuant to said arrangement, your orators are not advised and have no knowledge.

Your orators show, the said Lot number two (2), with the dwelling house thereon, is now in actual occupation as a homestead by your orators and their said parents, brothers and sisters; and that said lots numbered one (1), four (4), and five (5), are in the possession of said Franklin Savings Bank, and the rents and profits thereof, are being collected and appropriated by said bank to its own use.

That the said bank and its agents have neglected to properly care for the said buildings and other improvements and have allowed them

to fall into bad condition and repair, and that two of said houses are in consequence thereof, vacant and unoccupied, and have been so vacant and unoccupied for a long time.

Your orators charge that the said guardian *ad litem*, acted without authority in entering into said arrangement with said Franklin Savings Bank for a compromise and settlement of said foreclosure suit, and that said compromise and settlement was a fraud upon the rights of these complainants and upon this Honorable Court; that the said decree of foreclosure and sale ought, for the reasons and under the circumstances aforesaid, to be set aside as to these complainants and be declared to be fraudulent and void; and further, that said decree is erroneous and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as it appears by the supplemental bill that said Mulliken as successor in trust to the said Ira Scott, had no power or authority to encumber said trust estate nor to create any lien, charge, or encumbrance upon said land, and that the execution of said trust deeds by him was a direct and plain violation of the trusts, declared in said deed to Ira Scott.

In consideration whereof, and inasmuch as such errors and imperfections appear in the body of said decree, and there is no proof on which to ground any decree, declaring said trust deeds to Francis S. Howe to be first liens upon said real estate, nor that said land should be sold, discharged of all claims by or on behalf of all of the defendants to said suit, nor discharged from all trusts theretofore existing in favor of either of said infant defendants, these complainants hope that the said decree will be reversed and set aside.

These complainants further show, that by reason of the actings, doings, and proceedings hereinbefore set forth, the rights, interests, and estate of your orators, have become complicated with various adverse claims, and clouded thereby; that your orators are in danger of great loss and damage unless some proper persons shall be appointed as trustee in place of the said trustee and successor in trust, named in said deed of trust to Ira Scott; and unless the said trust estate and property be restored to the possession of the trustee, so to be appointed, and by him be held and managed in accordance with the terms of said trust, and unless all the said pretended liens and the said decrees herein complained of, be declared and decreed to be of no force and effect upon the estate and interest of your orators, and said trust estate be decreed to be free and discharged from any and all of the clouds and encumbrances now existing thereon, growing out of the said unauthorized acts of the said Frank C. Taylor, Maria L. Taylor, and Charles H. Mulliken, trustee, and the instruments and deeds by them executed as aforesaid, subsequent to the creation of said trusts, and growing out of the said decrees of court that have been made and entered in the several suits and proceedings, hereinbefore recited and set forth.

These complainants show that they were not nor was either of them party to said suits in the Superior and Circuit courts of Cook county, your orators having been born since the pendency thereof; and that

the said complainants Katherine and Margaret were not party to the said foreclosure suit and decree in this court.

That the interest of these complainants in said trust property, subject to the interest of their mother, Maria L. Taylor, and to the rights of any children of their said parents that may be born hereafter, is three undivided sevenths of the said property; that the interests of the other children, who were party to said suits, is the remaining undivided four-sevenths; that the rights and interests of all of said children are concurrent, except so far as the rights of the four older children may have been affected by said suits in the Circuit and Superior courts of Cook county; that the rights and interests of said other four children are not adverse to the claims of these complainants and that inasmuch as the said suits and decrees in the said Circuit and Superior courts of Cook county may be held to bar and preclude said Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor from now asserting their rights, as *cestuis que* trust, to their four undivided sevenths to which they were entitled, these complainants are advised that it is proper that they should not join them as complainants in this bill, but make them defendants thereto, to the end that they may defend and set up their rights in and to said property in such manner as they may be advised.

To the end therefore, that the said defendants may, if they can show why your orators should not have the relief hereby prayed, full, true and perfect answer make, (not under oath, answers under oath being hereby waived,) to all and singular the premises as fully and particularly as if the same were hereinafter repeated.

Your orators pray that said two decrees of the Superior court of the county of Cook upon said bills of review be declared absolute as to the claims of the said Franklin Savings Bank and E. W. Russell, as successor in trust to Francis S. Howe, and all parties claiming by, through, or under them, as fully and to all intents as if said original decree had also been, upon said review, reversed and set aside as to the said Franklin Savings Bank and as to E. W. Russell.

That the said decree of the Circuit court of Cook county, establishing and declaring a lien upon said trust property and estate in favor of the said Gilsdorff and the said Baumanns and Sullivan, be declared to be fraudulent and void, as to these complainants and to have created no lien or incumbrance upon said property, nor upon the estate of your orators therein, and that the deed or deeds of said land executed and delivered by the master in chancery of said Superior court to the said Thomas, pursuant to the sale under said decree in favor of Gilsdorff, *et al*, be declared to be void and of no force and effect whatever, so far as the rights, interests and estate of these complainants is concerned.

That the said decree of foreclosure of this Honorable court be reviewed, reversed, and set aside, and that said trust deeds to Francis S. Howe, trustee, and E. W. Russell, successor in trust, be declared

to be void and of no effect upon the estate and interests of your orators in the land and premises therein described.

That the said John Q. Wells, who is a proper person to act as trustee under said deed of trust, and who has consented to act if appointed, or some other proper person, may be appointed as trustee under said deed of trust in place of the said Ira Scott to take the title to said land described in said trust deed to Ira Scott, (except said lot three (3) which has been conveyed as aforesaid,) and to hold the same upon the trusts in said deed declared; that the said Scott, Peabody, Mulliken, be commanded to make, execute and deliver to such new trustee, all needful and proper conveyances to vest in him said title.

That such new trustee, when appointed, be let into possession of all and singular the said lands and premises.

That the said Franklin Savings Bank be required to account for all money received from said receiver and for all the rents and profits of said property, during its possession of the same, and to pay over to such new trustee any balance remaining in its hands after payment of necessary expenses of maintaining said property.

That in the meantime a receiver be appointed by this Honorable court to take possession of said lots one, four and five, (being the lots now in possession of said bank,) to collect, get in, and receive the rents, issues, and profits thereof, and to hold the same subject to the order of this court, with the other and usual powers of a receiver in such cases, and for such other and further relief in the premises as to your Honors shall seem meet, and as the nature of this case may require.

May it please your Honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Francis B. Peabody, Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, and Ira Scott, thereby commanding them and every one of them at a certain day and under a certain pain therein to be specified, personally to be and appear before your Honors in this Honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide, such order and decree therein as to your Honors shall seem meet, and your orators will ever pray, etc.

By their Solicitor,
ROBERT B. KENDALL.
JOHN Q. WELLS, their next friend.

J. K. EDSALL,
*Of Counsel for Complainants.*

Afterward, to-wit: On the 17th day of June in the adjourned May Term of said court, 1887, in the record of the proceedings thereof in said entitled cause before Honorable Henry W. Blodgett, district Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

On the motion of Robert B. Kendall, Solicitor, it is ordered that Samuel C. Edsall be appointed guardian *ad litem*, for the infant defendant Alexander Taylor.

On the same day, to-wit: On the 17th day of June, 1887, came Alexander Taylor by his guardian *ad litem*, and filed in said clerk's office his answer to the amended bill in said entitled cause, which said answer is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NOI DISTRICT OF ILLINOIS.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery. No. 19,530.*

*The answer of Alexander Taylor, one of the defendants to the amended bill of complaint of Robert C. Taylor, et al.*

This defendant for answer to the amended bill of complaint says: He is an infant, under twenty-one years of age, and he submits his interests in said cause to the care and protection of this Honorable court.

By his Guardian *ad litem*,
SAMUEL C. EDSALL,
*Guardian ad litem.*

[Endorsed]: Filed June 17, 1887.
WM. H. BRADLEY, *Clerk.*

On the same day, to-wit: On the 17th day of June, 1887, came Frank C. Taylor, Jr., Maria L. Taylor, Jr. and Josephine S. Taylor, by their solicitors and filed in said clerk's office their answer to the amended bill in said entitled cause, which said answer is in the words and figures following, to-wit:

ANSWER OF FRANK C. TAYLOR, *et al.*

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Answer of Frank C. Taylor, et al. filed June 17, 1887.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.* *No. 19,530.*

*The joint answer of Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor, three of the defendants in the above entitled cause to the amended bill of complaint of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants.*

These defendants for answer to the said amended bill of complaint, or to so much thereof as they are advised it is material or necessary for them to make answer to, say that they are now, each of full and lawful age, having attained to such ages since the filing of the original bill of complaint in said cause, that the said Frank C. Taylor was born on the 13th day of April, A. D. 1865, and attained to the age of twenty-one years on the 13th day of April, A. D. 1886, that the said Maria L. Taylor, Jr., was born on the 3rd day of July, A. D. 1866, and attained to the age of eighteen years on the 3rd day of July, A. D. 1884, that the said Josephine S. Taylor was born on the 3rd day of August, A. D. 1867, and attained to the age of eighteen years on the 3rd day of August, A. D. 1885.

These defendants, further answering, say they admit that the statements and allegations in said amended bill of complaint are substantially true and that said complainants are entitled to the relief prayed for in said amended bill.

FRANK C. TAYLOR, JR.,
MARIA L. TAYLOR, JR.,
JOSEPHINE S. TAYLOR,
By SAMUEL C. EDSALL,
*Their Solicitor.*

[Endorsed]: Filed June 17, 1887.

WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 27th day of June, in the adjourned May Term of said Court, 1887, in the record of the proceedings thereof in said entitled cause before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

On motion of Mr. Kendall leave is given Frank C
Maria L. Taylor, Jr., Josephine S. Taylor and Alexan
file their cross bill herein, which is done.

On the same day, to-wit: On the 27th day of June
Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine
Alexander Taylor, by their solicitor, and filed in said
their bond for costs, and cross bill of complaint in said c
which said bond and cross bill are in the words and figu
to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, IN CHANCERY SITTING.

Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor (the said Alexander by John Q. Wells, his next friend), all of the city of Chicago, in the state of Illinois, and all being citizens of the state of Illinois, bring this their cross bill of complaint against the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, a citizen of the state of Rhode Island; Hiram H. Thomas, of said Pawtucket, a citizen of the state of Rhode Island; Ira Scott, of in the state of Michigan, a citizen of the state of Michigan; Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Robert Taylor, Katherine Taylor and Margaret Taylor, all of Chicago aforesaid, and citizens of the state of Illinois.

And thereupon your orators complain and say, that heretofore, to-wit: On or about the 18th day of March, A. D. 1887, the said Robert Taylor, Katherine Taylor and Margaret Taylor exhibited and filed in this Honorable court their amended bill of complaint against the said Franklin Savings Bank, and your orators and the other defendants herein named, and the said amended bill of complaint is now pending therein.

On the same day, to-wit: On the 17th day of June, 1887, came Frank C. Taylor, Jr., Maria L. Taylor, Jr. and Josephine S. Taylor, by their solicitors and filed in said clerk's office their answer to the amended bill in said entitled cause, which said answer is in the words and figures following, to-wit:

ANSWER OF FRANK C. TAYLOR, *et al.*

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Answer of Frank C. Taylor, et al. filed June 17, 1887.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.* *No. 19,530.*

*The joint answer of Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor, three of the defendants in the above entitled cause to the amended bill of complaint of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants.*

These defendants for answer to the said amended bill of complaint, or to so much thereof as they are advised it is material or necessary for them to make answer to, say that they are now, each of full and lawful age, having attained to such ages since the filing of the original bill of complaint in said cause, that the said Frank C. Taylor was born on the 13th day of April, A. D. 1865, and attained to the age of twenty-one years on the 13th day of April, A. D. 1886, that the said Maria L. Taylor, Jr., was born on the 3rd day of July, A. D. 1866, and attained to the age of eighteen years on the 3rd day of July, A. D. 1884, that the said Josephine S. Taylor was born on the 3rd day of August, A. D. 1867, and attained to the age of eighteen years on the 3rd day of August, A. D. 1885.

These defendants, further answering, say they admit that the statements and allegations in said amended bill of complaint are substantially true and that said complainants are entitled to the relief prayed for in said amended bill.

FRANK C. TAYLOR, JR.,
MARIA L. TAYLOR, JR.,
JOSEPHINE S. TAYLOR,
By SAMUEL C. EDSALL,
*Their Solicitor.*

[Endorsed]: Filed June 17, 1887.

WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 27th day of June, in the adjourned May Term of said Court, 1887, in the record of the proceedings thereof in said entitled cause before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Order entered June 27, 1889.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

On motion of Mr. Kendall leave is given Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor to file their cross bill herein, which is done.

On the same day, to-wit: On the 27th day of June, 1887, came Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, by their solicitor, and filed in said clerk's office their bond for costs, and cross bill of complaint in said entitled cause, which said bond and cross bill are in the words and figures following, to-wit:

Bond for Cost and Cross Bill filed June 27, 1887.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, IN CHANCERY SITTING.

Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor (the said Alexander by John Q. Wells, his next friend), all of the city of Chicago, in the state of Illinois, and all being citizens of the state of Illinois, bring this their cross bill of complaint against the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, a citizen of the state of Rhode Island; Hiram H. Thomas, of said Pawtucket, a citizen of the state of Rhode Island; Ira Scott, of in the state of Michigan, a citizen of the state of Michigan; Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Robert Taylor, Katherine Taylor and Margaret Taylor, all of Chicago aforesaid, and citizens of the state of Illinois.

And thereupon your orators complain and say, that heretofore, to-wit: On or about the 18th day of March, A. D. 1887, the said Robert Taylor, Katherine Taylor and Margaret Taylor exhibited and filed in this Honorable court their amended bill of complaint against the said Franklin Savings Bank, and your orators and the other defendants herein named, and the said amended bill of complaint is now pending therein.

That in and by said amended bill of complaint the complainants claim, set forth and show certain rights and interests in real estate therein described, under and by virtue of a certain deed of conveyance made by the said Frank C. Taylor and Maria L. Taylor (the father and mother of said complainants, and of your orators) to the said Ira Scott, as trustee, to hold upon certain trusts therein and thereby declared and created, a copy of which said deed is attached to said amended bill of complaint and made a part thereof; and further set forth and show that divers unauthorized acts and doings of certain of the parties to said amended bill and certain illegal, improper and fraudulent proceedings in courts, therein particularly set forth, have so clouded the title to said real estate and the interests therein of said complainants as to endanger the rights and interests aforesaid, unless a new trustee of said property shall be appointed as the successor in trust to the said Ira Scott, who, as is stated in said amended bill, has resigned said trusts, and unless certain decrees of court and certain deeds and encumbrances (all of which are in said bill fully described), shall be declared to be void and of no force or effect upon the estate and interests of said complainants.

Answer of Frank C. T lor, et al. fi June 17, 18

That in and by said amended bill of complaint it is stated that the rights and interests of the complainants therein in and to said trust estate, subject to the interest of their mother and subject to the interests and rights of any children that may be born hereafter to their said parents, are three undivided sevenths of the whole of said property, subject to the trusts aforesaid, and that the interests of your orators therein, subject as aforesaid, are four undivided sevenths thereof, and that the rights and interests of all of said children are concurrent, except so far as the rights of your orators have been affected by the decrees of court complained of in certain suits wherein your orators had been made party.

That in and by said amended bill of complaint the said complainants pray relief from certain decrees of the Superior and Circuit courts of Cook county, in the state of Illinois, within said Northern district of Illinois, and pray that the decree of foreclosure and sale of said real estate made by this Honorable court in a certain cause, which is fully described in said amended bill, be reviewed, reversed and set aside as to the interests of said complainants; that a new trustee be appointed for said trust estate in place of the said Ira Scott, etc.; and for other and further relief as therein prayed, and as the equities of their case may require.

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Your orators show that they have filed their answers to said amended bill of complaint, (the said Alexander Taylor answering by his guardian *ad litem*.)

That in and by the answers of the said Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor, it is, among other things, averred that they, the said Frank, Maria and Josephine, have attained to full and lawful age since the filing of the original bill in this cause, and that they admit that the statements and charges contained in said

amended bill are substantially true, as therein alleged, and that the complainants therein are entitled to the relief therein prayed.

Your orators further show that the said Franklin Savings Bank and Hiram H. Thomas have appeared in court, by their solicitors, and have filed a general demurrer to said amended bill, and that no other or further proceedings in said cause have been had.

Your orators hereby pray leave to adopt the statements and charges of said amended bill of complaint as and for the statements and charges of this cross bill as fully and completely as if the same were herein repeated and set forth, and hereby make the said statements and charges (including the copy of said trust deed attached to said amended bill), part of this cross bill of complaint.

And your orators further charge that the rights and interests of your orators have not been in any way or manner affected, other than have the rights and interests of the complainants in said amended bill by the said suits and decrees to which they were party, your orators being infants at the dates of all said proceedings to which they have been party.

Your orators further show that the said Frank C. Taylor, Jr., attained to the age of twenty-one years on the 13th day of April, A. D. 1886, that the said Maria L. Taylor attained to the age of eighteen years on the 3rd day of July, A. D. 1884, and that the said Josephine S. Taylor attained to the age of eighteen years on the 3rd day of August, A. D. 1885, and that the said Alexander Taylor is an infant, under twenty-one years of age.

To the end therefore that the said defendants herein named may if they can show why your orators should not have the relief hereby prayed; full true and perfect answers make (not under oath, answers under oath being hereby waived) to all and singular the premises, as fully and particularly as if the same were hereinafter repeated.

Your orators pray that said two decrees of the Superior court of Cook county made upon said bills of review be declared absolute and conclusive as to the claims of the said Franklin Savings Bank, and E. W. Russell and as to all persons and parties claiming any interest in said property, by through or under them, as fully and to all intents and purposes as if said decree had been upon said review reversed and set aside as to them.

That the said decree of the Circuit court of Cook county establishing and declaring a lien upon said trust property in favor of the said Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, be declared to be fraudulent and void and that the lien or liens thereby established be declared void and of no effect, and said property be declared to be free and discharged of and from said liens so far as the interests of your orators are concerned, and so far as the title of the trustee under said deed of trust to Ira Scott is concerned, and that the deed or deeds of said land and lots executed by the master in chancery of said Superior court to the said Thomas pursuant to the sale made under said decree in favor of Gilsdorff, and others, be

declared to be void and of no force and effect whatever and that the said deeds be cancelled, surrendered and set aside.

That the said decree of foreclosure made by this Honorable court be reviewed, reversed, and set aside, and said trust deeds given by the said Mulliken as trustee, to Francis S. Howe, trustee, and E. W. Russell as successor in trust, be declared to be void and of no effect as to the estate and interests of your orators in the land and premises therein described.

That the said trust estate be declared to be free and discharged from each and all of the liens, incumbrances, charges, claims and demands of every nature growing out of the acts, doings and proceedings stated in said amended bill of complaint, and herein referred to.

That the said John Q. Wells, or some other proper person be appointed by this Honorable court as trustee under said deed of trust in place of the said Ira Scott, to take the title to the land described in said deed of trust (except said lot (3) conveyed, as aforesaid to Julia S. Taylor) and to hold the same upon the trusts declared and created in and by said deed; and that the said Scott, Mulliken and Peabody be commanded by this court to make, execute and deliver to such new trustee, when appointed, all needful and proper conveyance to vest in him any and all title they now have to said property; and that thereupon said new trustee be let into possession thereof.

Your orators pray that the said Franklin Savings Bank be required to account for all monies received from the receiver of said property appointed in said foreclosure suit, and for all rents issues and profits of said property during the period it has been in possession thereof, and to pay over to said new trustee, when appointed, any balance remaining in its hands over and above the necessary expenses incurred in maintaining said property.

That in the meantime a receiver be appointed by this court to take possession of said lots one (1) four (4) and five (5) being the lots now in the possession of said bank, with authority to collect, get in and receive the rents, issues and profits thereof, and hold the same subject to the further order of court herein, and with the other and usual powers of a receiver in such cases.

And for such other and further relief in the premises as to your Honors shall seem meet and as the nature and equities of the case may require.

Your orators pray that the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Robert Taylor, Katherine Taylor and Margaret Taylor and Ira Scott, be required to answer all and singular the premises and to

stand to, perform and abide such order and decree herein as to your Honors shall seem meet.

And your orators will ever pray, etc.

FRANK C. TAYLOR, JR.,
MARIA L. TAYLOR, JR.,
JOSEPHINE S. TAYLOR,
By SAMUEL C. EDSALL,
*Their Solicitor.*
ALEXANDER TAYLOR,
By JNO. Q. WELLS,
*His next Friend.*

SAMUEL C. EDSALL,

*Solicitor.*

[Endorsed]: Filed June 27, 1887.

WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 13th day of July, 1887, came the Franklin Savings Bank and Hiram H. Thomas, by their solicitors, and filed in said clerk's office their demurrer to the cross bill in said entitled cause, which said demurrer is in the words and figures following, to-wit:

Afterward, to-wit: On the 1st day of March, 1888, came The Franklin Savings Bank and Hiram H. Thomas, by their solicitors, and filed in said clerk's office their answer to the bill in said entitled cause, which said answer is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Answer of th Franklin Sa ings Bank et al filed Marc 1, 1888.

CIRCUIT COURT OF THE UNITED STATES IN AND FOR SAID DISTRICT.

Robert C. Taylor, *et al.*,
*vs.*
The Franklin Savings Bank, *et al.* } *In Chancery.*

*The joint and several answers of The Franklin Savings Bank and Hiram H. Thomas to the bill of complaint in the above entitled cause.*

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors,

uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say, that they believe it to be true that on or about the thirteenth (13th) day of June, 1871, Maria L. Taylor did hold the title to the premises described in said bill of complaint, and did on or about that date execute to one Ira Scott a certain deed of conveyance of said premises upon certain trusts which will be fully shown by said conveyance itself, and these defendants call upon said complainants to produce said conveyance upon the hearing of this cause. But these defendants say that they do not know whether said Maria L. Taylor was seized in fee simple of said premises, or whether she held the same upon some secret trust, and they do not know whether said conveyance to Ira Scott was ever delivered or not, and they leave the complainants to make such proof to sustain their allegations in that behalf as they shall be advised is material or necessary.

And these defendants, further answering, say that they believe it to be true, that said premises were occupied by Frank C. Taylor and his wife, Maria L. Taylor, and their children, as a homestead up to the time that the buildings thereon were destroyed by the great fire, which occurred in Chicago upon the eighth (8th) and ninth (9th) days of October, 1871. But these defendants aver that the same were occupied and used as such homestead in like manner as they were being occupied and used at the time of the making of said conveyance to said Ira Scott, and that the same were so used and occupied without any reference whatever to the terms of the aforesaid conveyance to said Scott.

And these defendants, further answering, say that it is true that said Franklin Savings Bank did loan the sum of thirty thousand dollars ($30,000), substantially as is alleged in said bill of complaint, and did take as security therefore the note of said Frank C. Taylor, and a trust deed to Edward Brown upon the aforesaid premises for the purpose of securing said note; that it was represented to said bank that said money was to be used, and these defendants aver that the same was so used, in the erection of a block of dwelling houses upon the premises aforesaid.

And these defendants, further answering, say that if the aforesaid conveyance to Ira Scott had, prior to the time of the making of said loan of thirty thousand dollars ($30,000) been recorded, as is alleged in said bill of complaint, said bank had no notice thereof, and at the time of making of said loan the records of Cook County, Illinois, had been destroyed by fire, and there was no record of any kind in existence known to said bank from which it could obtain knowledge or notice of the said conveyance to said Scott.

And these defendants further answering, say that they believe it to be true that during the years 1872 and 1873, a block of five (5) dwelling houses was built upon the premises described in said bill of complaint, at a cost of about fifty-three thousand seven hundred dollars ($53,700), of which amount thirty-six thousand dollars ($36,000)

was borrowed from said bank, and about ten thousand dollars ($10,000) additional was paid by said bank towards the cost of said buildings in the subsequent purchase by said bank of a decree for a mechanics lien upon said buildings, and whether or not the balance of the cost of said improvements was paid by said Frank C. Taylor from his own means or otherwise, these defendants are ignorant.

And these defendants, further answering, say that after the making of said loan of thirty thousand dollars (30,000), and on or about the thirtieth (30th) day of January, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, did file their certain bill in the Superior court of said Cook county, for the restoration of the terms of said conveyance to Ira Scott, substantially as is set forth in said bill of complaint, to which bill of complaint said bank was made party defendant, and a decree was entered in said proceeding, substantially as is alleged in said bill of complaint; and afterwards, and on or about the twenty-third (23rd) day of July, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, did file a certain other bill of complaint in said Superior court, in which last mentioned proceeding a decree was entered substantially as is alleged in said bill of complaint.

And these defendants, further answering, say that the amount of said loan of thirty thousand dollars ($30,000) was increased by said bank to thirty-six thousand dollars ($36,000), and four notes for the sum of nine thousand dollars (9,000), each were given to said bank signed by said Frank C. Taylor and Maria L. Taylor, his wife, and by Charles H. Mulliken, as trustee, and the same was secured by four trust deeds, substantially as is alleged in said bill of complaint.

And these defendants, further answering, admit that on or about the first day of January, 1874, said Mulliken and said Frank C. Taylor and wife did execute and deliver another trust deed as security for the payment of a certain promissory note for the sum of two thousand eight hundred and seventy-five dollars ($2,875), as is alleged in said bill of complaint.

And these defendants, further answering, say that bills of review were filed in each of the suits in the Superior court, and proceedings were had thereon, substantially as is alleged in said bill of complaint, but for greater certainty these defendants beg leave to refer to the records of said Superior court in said causes.

And these defendants, further answering, say that one Henry Gilsdorff did file his petition in the Circuit court of Cook county, Illinois, for the purpose of establishing a mechanics lien upon all of the premises described in said bill of complaint and improvements thereon, substantially as is alleged in said bill of complaint. And these defendants admit that James B. Sullivan, Frederick Baumann and Edward Baumann became parties to said proceeding by filing an intervening petition therein.

And these defendants, further answering, say that neither of them took any active part in the defense of said mechanics lien suit, although an answer was filed therein for said bank at the instance and request of said Frank C. Taylor.

And these defendants, further answering, admit that a judgment was rendered in said suit for a mechanics lien decree, substantially as is alleged in said bill of complaint, and ever that after the rendering of said judgment an appeal was prayed therefrom by the defendants, or some of said defendants in said suit, to the Supreme court of said state of Illinois, and that said court affirmed said judgment and rendered an opinion in said cause which is matter of record in said Supreme court and has been duly published in the authorized reports of the decisions of said court.

And these defendants, further answering, say that after said judgment had been affirmed by said Supreme court it became necessary for said bank, in order to protect its interest as mortgagee as aforesaid, and to prevent a sale under said judgment of the premises covered by the mortgages of said bank, to purchase said judgment, the same being a lien prior to said mortgages upon the premises conveyed by said mortgages. And thereupon, and on and about March 19, 1875, said bank did purchase said judgment from said Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, paying to them the full amount of said judgment, principal and interest, together with the taxable costs, amounting in all to the sum of nine thousand four hundred and eighty-three dollars and twenty-nine cents ($9,483.29) and said bank took an assignment to itself of said judgment.

And these defendants, further answering, say that said judgment was rendered by said Circuit court on or about the twentieth (20th) day of July, 1874, and the same was affirmed by said Supreme Court on or about the thirtieth (30th) day of January, 1875. And these defendants are informed that neither said Gilsdorff nor Sullivan, nor either of said Baumanns had, at the time said judgment was rendered by said Circuit court, nor at the time the same was affirmed by said Supreme court, any actual knowledge of the contents of the conveyance made to said Scott as aforesaid, except such as they had gained from the decree rendered by the Superior court of Cook county, restoring the terms of said conveyance as aforesaid.

And these defendants, further answering, say that the decree entered by said Superior court, restoring the terms of said conveyance was entered on or about the twenty-ninth (29th) day of March, 1873, and remained in full force until the fourth (4th) day of March, 1879, And these defendants are informed and believe, and so aver the fact to be, that said Gilsdorff, Sullivan and Baumanns made their contracts for the improvements upon said premises and obtained their liens upon said contracts by the aforesaid judgment, relying in good faith upon the decree of said Superior court, restoring the terms of the conveyance to said Scott, and while said decree was in full force. And these defendants deny that the petitioners in said suit for a mechanics lien made any false representations as to the contents of the conveyance to said Scott, but aver that on the contrary the allegations made by said petitioners in reference to the contents of said convey-

ance were made by them truthfully relying upon the aforesaid decree of said Superior court.

And these defendants, further answering, say that they are ignorant whether upon the trial of said suit for a mechanics lien, the petitioners in said suit exhibited and put in evidence the conveyance to said Ira Scott as restored by the decree of the Superior court of Cook county as aforesaid, or a copy thereof, and are ignorant, what, if any, instructions were given by the court to the jury based upon the terms of said conveyance. And these defendants aver that said bank and its officers at the time of the trial of said cause, verily believe that the aforesaid decree of the Superior court correctly set forth the terms of the conveyance to said Scott, and deny that the judgment in said mechanics lien suit was procured by misrepresentation and imposition upon the court, as is alleged in said bill of complaint; and further, say that they are advised by counsel that this Honorable court cannot review or set aside the action of said Circuit court of Cook county in rendering the judgment aforesaid, affirmed by the Supreme court of the state of Illinois as aforesaid, because of any errors in the proceedings of said Circuit court.

And these defendants, further answering, say that neither said Gilsdorff, nor said Frederick Baumann, nor said Edward Baumann, nor said James B. Sullivan was a party to the proceedings in said Superior court, to review and set aside the decree rendered by said court upon March 29, 1873, as aforesaid, and neither of the defendants at the time of the assignment of said judgment to said bank had any actual knowledge or notice that the conveyance to said Scott differed in its terms from the conveyance as restored and established by said decree of said Superior court, and said bank purchased said judgment and took an assignment thereof in full reliance upon the decree of said Superior court entered March 29, 1873, as aforesaid. And these defendants deny that said judgment was purchased by said bank with any notice of any fraud connected with the obtaining of said judgment, and deny that there was any such fraud.

And these defendants, further answering, admit that on or about the fifteenth (15th) day of July, 1881, the premises described in said bill of complaint were sold under and by virtue of the judgment rendered in the mechanics lien suit aforesaid, and that at said sale the premises were purchased by said defendant Thomas, for and on behalf of said bank, and that deeds of the aforesaid premises were subsequently made to said Thomas in pursuance of such sale.

And these defendants, further answering, admit that said bank did on or about the twenty-eighth (28th) day of June, 1876, file its certain bill of complaint in this Honorable court for the foreclosure of the five (5) trust deeds made for its benefit as aforesaid, and that a guardian *ad litem* was appointed for all of the infant defendants therein, and that a receiver was appointed to take possession of the premises described in said trust deeds with the usual powers of a receiver in such cases; and that said cause was thereafter referred by this Honorable court to Henry W. Bishop, one of the masters in chancery of

taining the benefit of said property by sale or otherwise, and has, by various proceedings in chancery, instituted by him in the names of his minor children, attempted to assert some title to said premises adverse to that of said bank, thereby violating the agreement made by him and said Maria L. Taylor for the release of one of said houses from the claims of said bank as aforesaid; and these defendants aver that this bill of complaint is filed at the instance of said Frank C. Taylor, and that he is seeking thereby to defeat the title of said bank acquired as aforesaid, and yet retain for the benefit of said minor children, free from all claims and demands and from all liens heretofore owned by said bank as aforesaid, the house and lot for which a deed was issued by the master to said Peckham as aforesaid, all which is a manifest fraud upon the part of said Frank C. Taylor, and is contrary to equity and good conscience. All which matters and things these defendants are ready and willing to maintain and prove as this Honorable court shall direct, and they pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) THE FRANKLIN SAVINGS BANK,
By SWIFT & CAMPBELL,
*Its Solicitors.*

HIRAM H. THOMAS,
By SWIFT & CAMPBELL,
*His Solicitors.*

SWIFT & CAMPBELL,
*Solicitors for the Franklin Savings Bank and Hiram H. Thomas.*

W. H. SWIFT,
*Of Counsel.*

[Endorsed]: Filed Mch. 1, 1888.

WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 5th day of April, 1888, came The Franklin Savings Bank and Hiram H. Thomas, by their solicitors, and filed in said clerk's office their answer to the cross bill in said entitled cause, which said answer is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES IN AND FOR SAID DISTRICT.

Robert C. Taylor, *et al.*,
*vs.*
The Franklin Savings Bank, *et al.* } *Bill.*

Frank C. Taylor, Jr., *et al.*,
*vs.*
The Franklin Savings Bank, *et al.* } *Cross Bill.*

*The joint and several answers of The Franklin Savings Bank and Hiram H. Thomas to the cross bill in the above entitled cause.*

These defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say that it is true that on or about the eighteenth (18th) day of March, A. D. 1887, Robert Taylor, Katherine Taylor and Margaret Taylor did file in this Honorable court their amended bill of complaint, as is alleged in said cross bill, and that in and by said amended bill of complaint the complainants therein did claim certain rights and interests in certain real estate described in said original bill, and did set up certain other matters and things, which are fully shown by said amended bill of complaint now on file in this Honorable court in the above entitled cause, and to which these defendants beg leave to refer for full answer to the allegations of the complainants in said cross bill in reference to the contents of said amended bill of complaint.

And these defendants, further answering, admit that they did appear in the above entitled cause and file a general demurrer to said amended bill, as is alleged in said cross bill, but subsequently, and since the filing of said demurrer, these defendants have answered said amended bill of complaint.

And these defendants, further answering, say that they believe it to be true that on or about the thirteenth (13th) day of June, 1871, Maria L. Taylor did hold the title to the real estate described in said amended bill of complaint, and that she did on or about that date execute to one Ira Scott a certain deed of conveyance of said real estate upon certain trusts, which will be fully shown by said conveyance itself, and these defendants call upon the complainants in said cross bill to produce said conveyance upon the hearing of this cause. But these defendants say that they do not know whether said Maria L.

Taylor was seized in fee simple of said real estate, as is alleged in said amended bill of complaint, or whether she held the same upon some secret trust, and they do not know whether said conveyance to said Scott was ever delivered or not, and they leave the complainants in said cross bill to make such proof to sustain their allegations in that behalf as they shall be advised is material or necessary.

And these defendants, further answering, say that they believe it to be true that said real estate was occupied by Frank C. Taylor and his wife, Maria L. Taylor, and their children, as a homestead up to the time that the buildings thereon were destroyed by the great fire, which occurred in Chicago upon the 8th and 9th days of October, 1871; but these defendants aver that said premises were occupied and used as a homestead in like manner as they were being occupied and used prior to the time of the making of said conveyance to said Scott, and such use and occupation had no reference whatever to the terms of the conveyance to said Scott.

And these defendants, further answering, say that it is true that said Franklin Savings Bank did loan the sum of thirty thousand dollars ($30,000), substantially as is alleged in said cross bill, and did take as security therefor the note of said Frank C. Taylor and a trust deed to Edward Brown upon the aforesaid premises, for the purpose of securing said note; that it was represented to said bank that said money was to be used in the erection of a block of dwelling houses upon said premises, and these defendants aver that said money was so used.

And these defendants, further answering, say that if the aforesaid conveyance to said Scott had, prior to the time of the making of said loan of thirty thousand dollars ($30,000), been recorded, as is alleged in said cross bill, said bank had no notice thereof, and at the time of making said loan the records of Cook county, Illinois, had been destroyed by fire, and there was no record of any kind in existence known to said bank from which it could obtain knowledge or notice of the contents of said conveyance to said Scott.

And these defendants, further answering, say that they believe it to be true that during the years 1872 and 1873, a block of five (5) dwelling houses was built upon the premises described in said cross bill at a cost of about fifty-three thousand seven hundred dollars ($53,700), of which amount thirty-six thousand dollars ($36,000) was borrowed from said bank, and about ten thousand dollars ($10,000) additional was paid by said bank towards the cost of said buildings by the subsequent purchase by said bank of a certain decree for a mechanics lien upon said buildings, and whether or not the balance of the cost of said improvements was paid by said Frank C. Taylor from his own means or otherwise, these defendants are ignorant.

And these defendants, further answering, say that after the making of said loan of thirty thousand dollars ($30,000), and on or about the thirtieth (30th) day of January, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, did file their certain bill in the Superior court of said Cook county, for the restoration of the terms of said

conveyance to said Scott, substantially as is set forth in said cross bill, to which bill of complaint said bank was made party defendant, and a decree was entered in said proceeding, substantially as is alleged in said cross bill; and afterwards, and on or about the twenty-third (23rd) day of July, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, did file a certain other bill of complaint in said Superior court, in which last mentioned proceeding a decree was entered, substantially as is alleged in said cross bill.

And these defendants, further answering, say that the amount of said loan of thirty thousand dollars ($30,000) was increased by said bank to thirty-six thousand dollars ($36,000), and four (4) notes for the sum of nine thousand dollars ($9,000) each were given to said bank, signed by said Frank C. Taylor and Maria L. Taylor, his wife, and by Charles H. Mulliken, as trustee, and the same were secured by four (4) trust deeds, substantially as is alleged in said cross bill.

And these defendants, further answering, admit that on or about the first day of January, 1874, said Mulliken and said Frank C. Taylor and wife, did execute and deliver a certain other trust deed as security for the payment of a certain promissory note for the sum of two thousand eight hundred and seventy-five dollars ($2,875), as is alleged in said cross bill.

And these defendants, further answering, say that bills of review were filed in each of the suits in said Superior court, and proceedings were had thereon, substantially as is alleged in said cross bill, but for greater certainty these defendants beg leave to refer to the records of said Superior court in said causes.

And these defendants, further answering, say that one Henry Gilsdorff, did file his petition in the Circuit court of Cook county, Illinois, for the purpose of establishing a mechanics lien upon all of the premises described in said amended bill of complaint, and improvements thereon, substantially as is alleged in said cross bill. And these defendants admit that James B. Sullivan, Frederick Baumann and Edward Baumann became parties to said proceeding by filing an intervening petition therein.

And these defendants, further answering, say that neither of them took any active part in the defense of said mechanics lien suit, although an answer was filed therein for said bank at the instance and request of said Frank C. Taylor.

And these defendants, further answering, admit that a judgment was rendered in said suit for a mechanics lien decree, substantially as is alleged in said cross bill, and aver that after the rendering of said judgment an appeal was prayed therefrom by the defendants, or some of said defendants, in said suit to the Supreme court of said state of Illinois, and that said court affirmed said judgment and rendered an opinion in said cause which is matter of record in said Supreme court and has been duly published in the authorized reports of the decisions of said court.

And these defendants, further answering, say that after said judgment had been affirmed by said Supreme court it became necessary

for said bank, in order to protect its interest as mortgagee as aforesaid, and to prevent a sale under said judgment of the premises covered by the mortgages in said bank, to purchase said judgment, the same being a lien prior to said mortgages upon the premises conveyed by said mortgages, and thereupon, and on or about March 19, 1875, said bank did purchase said judgment from said Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, paying to them the full amount of said judgment, principal and interest, together with the taxable costs, amounting in all to the sum of nine thousand four hundred and eighty-three dollars and twenty-nine cents ($9,483.29), and said bank took an assignment to itself of said judgment.

And these defendants, further answering, say that said judgment was rendered by said Circuit court of Cook county on or about the twentieth (20th) day of July, 1874, and the same was affirmed by said Supreme court on or about the thirtieth (30th) day of January, 1875. And these defendants are informed that neither said Gilsdorff, nor Sullivan, nor either of said Baumanns had, at the time said judgment was rendered by said Circuit court, or at the time the same was affirmed by said Supreme court, any actual knowledge of the contents of the conveyance made to said Scott as aforesaid, except such as they had gained from the decree rendered by the Superior court of Cook county restoring the terms of said conveyance as aforesaid.

And these defendants, further answering, say that the decree entered by said Superior court restoring the terms of said conveyance, was entered on or about the twenty-ninth (29th) day of March, 1873, and remained in full force until the fourth (4th) day of March, 1879. And these defendants are informed, and believe, and so aver the fact to be, that said Gilsdorff, Sullivan and Baumanns made their contracts for the improvements upon said premises and obtained their liens upon said contracts by the aforesaid judgment, relying in good faith upon the decree of said Superior court restoring the terms of the conveyance to said Scott, and while said decree was in full force. And these defendants deny that the petitioners in said suit for a mechanics lien made any false representations as to the contents of the conveyance to said Scott, but aver that, on the contrary, the allegations made by said petitioners in reference to the contents of said conveyance were made by them truthfully, relying upon the aforesaid decree of said Superior court.

And these defendants, further answering, say that they are ignorant whether upon the trial of said suit for a mechanics lien, the petitioners in said suit exhibited and put in evidence the conveyance to said Ira Scott as restored by the decree of the Superior court of Cook county as aforesaid, or a copy thereof, and are ignorant what, if any, instructions were given by the court to the jury based upon the terms of the conveyance. And these defendants aver that said bank and its officers at the time of the trial of said cause verily believed that the aforesaid decree of said Superior court correctly set forth the terms of the conveyance to said Scott, and deny that the judgment in

said mechanics lien suit was procured by any misrepresentation or imposition upon the court, as is alleged in said cross bill; and further, say that they are advised by counsel that this Honorable court cannot review or set aside the action of said Circuit court of Cook county in rendering the judgment aforesaid, affirmed by the Supreme court of the state of Illinois as aforesaid, because of any errors in the proceedings of said Circuit court.

And these defendants, further answering, say that neither said Gilsdorff, nor said Frederick Baumann, nor said Edward Baumann, nor said James B. Sullivan was a party to the proceedings in said Superior court to review and set aside the decree rendered by said court upon March 29, 1873, as aforesaid; and neither of these defendants at the time of the assignment of said judgment to said bank had any actual knowledge or notice that the conveyance to said Scott differed in its terms from the conveyance as restored and established by said decree of said Superior court, and said bank purchased said judgment and took an assignment thereof in full reliance upon the decree of said Superior court, entered March 29, 1873, as aforesaid. And these defendants deny that said judgment was purchased by said bank with any notice of any fraud connected with the obtaining of said judgment, and deny that there was any such fraud.

And these defendants, further answering, admit that on or about the fifteenth (15th) day of July, 1881, the premises described in said bill of complaint were sold under and by virtue of the judgment rendered in the mechanics lien suit aforesaid, and that at said sale the premises were purchased by said defendant Thomas for and on behalf of said bank, and that deeds of the aforesaid premises were subsequently made to said Thomas in pursuance of said sale.

And these defendants, further answering, admit that said bank did on or about the twenty-eighth (28th) day of June, 1876, file its certain bill of complaint in this Honorable court for the foreclosure of the five (5) trust deeds made for its benefit as aforesaid, and that a guardian *ad litem* was appointed for all of the infant defendants therein, and that a receiver was appointed to take possession of the premises described in said trust deeds, with the usual powers of a receiver in such cases, and that said cause was thereafter referred by this Honorable court to Henry W. Bishop, one of the masters in chancery of said court, to take proofs and report the amount due to said bank and secured by the aforesaid trust deeds. And while the said cause was pending in this court, upon the reference to said master as aforesaid, and after the evidence on behalf of said bank had been concluded, said Frank C. Taylor produced and offered in evidence a certain instrument purporting to be the original conveyance to said Ira Scott, said Frank C. Taylor claiming that the same had been mislaid, instead of having been destroyed by fire, and that it had been discovered since said bank had commenced its foreclosure proceeding aforesaid.

And these defendants, further answering, admit that after the production by said Frank C. Taylor of the alleged original conveyance

to said Scott, said bank did file its certain supplemental bill in this Honorable court, setting up, amongst other things, the proceedings taken to review the two decrees of the Superior court of Cook county hereinbefore mentioned, and thereupon Orville Peckham was substituted as guardian *ad litem* for the infant defendants to said cause, and said Peckham, as such guardian, fully answered said bill of complaint and supplemental bill, setting up, amongst other things, the same claims on behalf of said infant defendants which are set up by the complainants in their cross bill herein, and subsequently said master in chancery made a full report to this Honorable court, which was approved and confirmed, and said court entered a decree in said cause finding the amount due to said bank secured by the aforesaid trust deeds, and ordered a sale of the premises conveyed by said trust deeds to satisfy the amount of said indebtedness in accordance with the usual practice in such causes, all which matters and things will more fully appear from the records in this Honorable court in said cause and the files in said cause, to all which these defendants ask leave to refer. And these defendants say, that all of the complainants in this cross bill were parties to said foreclosure suit, and said Peckham was one of the solicitors for the defendant Maria L. Taylor and for all the children of said Frank C. and Maria L. Taylor, and for all the complainants in said cross bill.

And these defendants, further answering, say that it is true that while said foreclosure proceedings were pending, an arrangement was made between said bank and said Frank C. Taylor, Maria L. Taylor and said Peckham, as guardian *ad litem* for said infant defendants, to release one of said dwelling houses, with the land appurtenant thereto, from all claim of said bank, and place the title to such house and land in some person as trustee for the use and benefit of all the infant children of said Frank C. and Maria L. Taylor then living, or who should thereafter be born; that said premises were sold by said master in chancery in pursuance of the decree of this Honorable court, and that one of the certificates issued at such sale, being the certificate representing the house and land to be released under the arrangement aforesaid, was transferred to said Peckham to hold in trust for said minor children then living, and such as should thereafter be born, and subsequently said Frank C. and Maria L. Taylor, and said Charles H. Mulliken, as trustee, executed and delivered a quit claim deed to the defendant Hiram H. Thomas for and on behalf of said defendant bank, which deed bears date July 20, A. D. 1880. And these defendants say that at the sale of said premises by said master in chancery said premises were purchased in different lots by said bank; that the certificates of sale, other than the one transferred to said Peckham as aforesaid, were retained by said bank, and after the equity of redemption had expired, deeds were issued thereon by said master and the same vested a title in fee simple in said bank and the premises conveyed thereby, subject, however, to the lien of the judgment in the mechanics lien suit aforesaid; and on or about the twenty-third (23d) day of January, 1882, said master reported his

aforesaid sale to this Honorable court and a decree was entered by said court approving and confirming said sale, which decree ever since has been, and still remains, in full force.

And these defendants, further answering, say that they are informed and believe that a master's deed was executed and delivered to said Peckham upon the certificate of sale transferred to him as aforesaid, and that subsequently said Peckham transferred to some person, unknown to these defendants, the title to said house and land, to hold the same in trust for the minor children of said Frank C. and Maria L. Taylor, including each and all of the complainants in said cross bill, and said premises are now, and have been ever since the transfer by said Peckham as aforesaid, occupied by said Frank C. Taylor and Maria L. Taylor and their children, including the complainants in said cross bill, as a homestead, and neither said Frank C. Taylor nor said Maria L. Taylor, nor either of the complainants in said cross bill, has offered to reconvey said house and land, or any part thereof, to said bank, nor has either of them offered to restore said bank to the position it was in at the time of the making of the aforesaid arrangement or agreement.

And these defendants, further answering, say that it is true that said bank is now in the possession of that portion of the premises described in said amended bill of complaint known as lots one (1), four (4), and five (5) in the subdivision of lot four (4) of block sixteen (16) in Bushnell's Addition to Chicago, being the same premises upon which master's deeds were issued and delivered to said bank as aforesaid. And these defendants aver that said bank is the owner in fee simple of the said premises claiming title thereto under and by virtue of the deeds issued in pursuance of the sale under the judgment in said mechanics lien suit; as well as under and by virtue of the deeds issued by the master in chancery in this Honorable court as aforesaid.

And these defendants, further answering, say that ever since the title to said premises was acquired by said bank in manner aforesaid, said Frank C. Taylor has sought to prevent said bank from obtaining the benefit of said property by sale or otherwise, and has, by various proceedings in chancery, instituted by him in the name of his minor children, attempted to assert some title to said premises adverse to that of said bank, thereby violating the agreement made by him and said Maria L. Taylor for the benefit of themselves and their said children for the release of one of said houses from the claims of said bank as aforesaid. And these defendants aver that the amended bill of complainant in this cause was filed at the instance of said Frank C. Taylor, and that said cross bill was also filed at his instance, and that he is seeking thereby to defeat the title of said bank, and yet retain, for the benefit of himself and his said children, free from all claims and demands and from all liens heretofore owned by said bank as aforesaid, the house and lot for which a deed was issued by the master in chancery to said Peckham as aforesaid, all which is a manifest fraud upon the part of said Frank C. Taylor, and is contrary to equity and good conscience.

And these defendants, further answering, say that such a length of time has elapsed since they complainants in said cross bill attained their majority that they cannot, nor can either of them, be heard by this Honorable court upon any bill or petition to review the aforesaid foreclosure proceedings for any of the causes set up in their said cross bill.

And these defendants, further answering, say that neither of the complainants in said cross bill hath, by said cross bill, shown any good cause for equitable relief, and these defendants ask the same benefit of their answer in this behalf as if they had demurred to said cross bill.

All which matters and things these defendants are ready and willing to maintain and prove as this Honorable court shall direct, and they pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

FRANKLIN SAVINGS BANK
And HIRAM H. THOMAS.

By SWIFT & CAMPBELL,
*Their Solicitors.*

SWIFT & CAMPBELL,
*Solicitors for Defendants.*

W. H. SWIFT,
*Of Counsel.*

[Endorsed]: Filed April 5, 1888.

WM. H. BRADLEY, *Clerk.*

Afterward, to wit: On the 19th day of April, 1888, came Robert C. Taylor, Katherine Taylor and Margaret Taylor, by their solicitor, and filed in said clerk's office their replication to the answer of the Franklin Savings Bank and Hiram H. Thomas to the amended bill in said entitled cause, which said replication is in the words and figures following, to-wit:

## Replication.

United States of America,
Northern District of Illinois. } ss.

In the Circuit Court of the United States, for the Northern District of Illinois.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *Term No. 393. In Chancery.*

*The replication of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants, to the joint answer of the Franklin Savings Bank and Hiram H. Thomas, to complainants' amended bill.*

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer for replication thereunto, say:

That they will aver and prove their said amended bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied is true, all which matters and things these repliants are and will be ready to aver and prove as this Honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

Robert B. Kendall,
*Solicitor for Complainants.*

[Endorsed]: Filed April 19, 1888.
Wm. H. Bradley, *Clerk.*

On the same day, to-wit: On the 19th day of April, 1888, came Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, by their solicitor, and filed in said clerk's office their replication to the answer of The Franklin Savings Bank and Hiram H. Thomas to the cross bill in said entitled cause, which said replication is in the words and figures following, to-wit:

REPLICATION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery. Term No. 393.*

*The replication of Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor to the joint answer of the Franklin Savings Bank and Hiram H. Thomas, to their cross bill of complaint.*

These repliants, saving and reserving unto themselves, all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say:

That they will aver and prove their said cross bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other thing or matter whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things these repliants are and will be ready to prove as this Honorable court shall direct, and humbly pray as in and by their said cross bill they have already prayed.

SAMUEL C. EDSALL,
*Solicitor for cross-complainants.*

[Endorsed]: Filed Apl. 19, 1888.
WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 17th day of November, in the adjourned October Term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Frank C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

On motion of R. B. Kendall, Esq., it is ordered that this cause be referred to E. B. Sherman, master in chancery, to take proof and report the same to the court.

Afterward, to-wit: On the 25th day of June, in the adjourned May Term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

Upon motion of complainants' solicitor, it is ordered that the complainants have leave to file replications to the answers of Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, as of June 17, 1887, *nunc pro tunc.*

On the same day, to-wit: On the 25th day of June, 1890, came Robert C. Taylor, Katherine Taylor and Margaret Taylor, by their solicitor, and filed in said clerk's office the replication to the answer of Ira Scott in said entitled cause, which said replication is in the words and figures following, to-wit:

REPLICATION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

*The replication of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants, to the separate answer of Ira Scott, defendant.*

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say:

That they will aver, maintain and prove their amended bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants, without this,

that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things these repliants are ready to aver, maintain and prove, as this Honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

ROBT. B. KENDALL,
*Solicitor for Complainant.*

[Endorsed]: Filed this 25th day of June, A. D. 1890.

WM. H. BRADLEY, *Clerk.*

On the same day, to-wit: On the 25th day of June, 1890, came Robert C. Taylor, Katherine Taylor and Margaret Taylor, by their solicitor, and filed in said clerk's office their replication to the answer of Alexander Taylor in said entitled cause, which said replication is in the words and figures following, to-wit:

REPLICATION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Robert C. Taylor, *et al*,
*vs.*
Franklin Savings Bank, *et al*, } *In Chancery.*

*The replication of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants, to the separate answer of Alexander Taylor to the amended bill of complaint.*

These repliants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say:

That they will aver, maintain and prove their amended bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendent is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsover in the said answer contained, material or effectural in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and

avoided, traversed, or denied, is true. All which matters and things these repliants are ready to aver, maintain and prove, as this Honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

ROBT. B. KENDALL,
*Solicitor for Complainant.*

[Endorsed]: Filed this 25th day of June, A. D. 1890, as of June 17, 1887.

WM. H. BRADLEY, *Clerk.*

On the same day, to-wit: On the 25th day of June, 1890, came Robert C. Taylor, Katherine Taylor and Margaret Taylor, by their solicitor, and filed in said clerk's office their replication to the answer of Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor in said entitled cause, which said replication is in the words and figures followlng, to-wit:

REPLICATION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

*The replication of Robert C. Taylor, Katherine Taylor and Margaret Taylor, complainants, to the joint and several answer of Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor to amended bill.*

These repliants, saving and reserving to themselves now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say:

That they will aver, maintain and prove their amended bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things

these repliants are ready to aver, maintain, and prove as this Honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

ROBT. B. KENDALL,
*Solicitor for Complainant.*

[Endorsed]: Filed this 25th day of June, A. D. 1890, as of June 17, 1887.

WM. H. BRADLEY, *Clerk.*

On the same day, to-wit: On the 25th day of June, in the adjourned May Term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

Upon motion of George L. Paddock, Esq., of counsel for Ira Scott, one of the defendants herein, it is ordered that the answer of the said Ira Scott, heretofore filed herein, do stand as his answer to the amended bill of complaint of the said Robert C. Taylor, *et al.*, and to the cross bill of complaint of the said Frank C. Taylor, Jr., *et al.*, and that the said complainants and cross-complainants have leave to file replications thereto, without prejudice to the order of reference heretofore entered herein, or any proceedings thereunder.

Afterward, to-wit: On the 27th day of June, 1890, came Charles D. Sherman and filed in said clerk's office his consent to act as next friend of infant complainants and cross-complainants in said entitled cause, which said consent is in the words and figures following, to-wit:

CONSENT OF CHARLES D. SHERMAN TO ACT AS NEXT FRIEND TO INFANT COMPLAINANTS AND CROSS-COMPLAINANTS.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.*

I consent to act as the next friend of the infant complainants in the above entitled cause, both under the amended bill and the cross bill, in place of John Q. Wells, deceased, if I should be appointed as such by the court.

CHARLES D. SHERMAN.

Dated May 23, 1890.

[Endorsed]: Filed June 27, 1890.
WM. H. BRADLEY, *Clerk.*

On the same day, to-wit: On the 27th day of June, in the adjourned May Term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *In Chancery.*

And now again come the complainants, by their solicitor, and it appearing to the court that Charles H. Mulliken, one of the defendants herein, has been duly served with process of summons herein prior to the removal of this cause from the Superior court of Cook county, Illinois, into this court, and that he has not appeared nor answered in said Superior court of Cook county, nor in this court, and the said Charles H. Mulliken being now three times called to appear and make answer herein comes not, but makes default herein, it is, therefore, upon motion of counsel for the complainants, ordered, adjudged and decreed by the court that his default be recorded and

that said amended bill of complaint be and the same is hereby taken as confessed as to him, the said Charles H. Mulliken.

And it appearing to the court that John Q. Wells, the next friend of the infant complainants in this cause, has deceased, and that Charles D. Sherman has consented to act herein in place of the said John Q. Wells, it is thereupon ordered, upon motion of the solicitor for said complainants, that the said Charles D. Sherman, be and he is hereby substituted and appointed as next friend of the infant complainants and cross-complainants herein, and it is ordered that this suit do proceed on the part of said infants in the name of the said Charles D. Sherman, as such next friend, and that this appointment relate back to the time of the death of said John Q. Wells.

On the same day, to-wit: On the 27th day of June, 1890, came Frank C. Taylor, Sr., and Maria L. Taylor, Sr., and filed in said clerk's office their answer to the amended and cross bills of complaint in said entitled cause, which said answer is in the words and figures following, to-wit:

ANSWER OF F. C. TAYLOR, SR., AND MARIA L. TAYLOR TO AMENDED BILL AND CROSS BILL.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *Bill.*

Frank C. Taylor, Jr., *et al.*,
*vs.*
Franklin Savings Bank, *et al.* } *Cross Bill.*

*The joint and several answer of Frank C. Taylor, Sr., and Maria L. Taylor, Sr., to the amended bill of complaint of Robert C. Taylor, et al., complainants, and to the cross bill of complaint of Frank C. Taylor, Jr., et al., cross-complainants.*

These defendants answering said amended bill of complaint and said cross bill of complaint, say, they admit all the matters and

things in both said amended bill and said cross bill to be true, substantially as therein alleged, and, having answered, pray hence to be dismissed with their costs in this behalf sustained.

FRANK C. TAYLOR,
MARIA L. TAYLOR,
Per F. C. TAYLOR.

[Endorsed]: Filed June 27, 1890.
WM. H. BRADLEY, *Clerk*.

Afterward, to-wit: On the 29th day of January, 1891, in the December Term of said court, 1890, in the record of the proceedings thereof in said entitled cause before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

ORDER.

Robert C. Taylor, *et al.*, *vs.* Franklin Savings Bank, *et al.* } *In Chancery. Original and Cross Bills.*

Now come the parties, by their solicitors, and this cause being set for hearing this day, now comes on to be heard upon pleadings and proofs, and after hearing the arguments of counsel, the court takes the same under advisement.

Afterward, to-wit: On the 13th day of July, 1891, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause, which said opinion is in the words and figures following, to-wit:

OPINION.

Robert C. Taylor, *et al.* *vs.* Franklin Savings Bank.

BLODGETT, J.

This is a bill to review, reverse and set aside a decree of foreclosure, entered in this court on the 30th of April, 1880, under which defendant claims title to lots 1, 4 and 5 of the subdivision of lot 4 in block 16, in Bushnell's Addition to the city of Chicago. And also to set aside a sale made July 15, 1881, under a decree for a mechanics lien in favor of Gilsdorff and others, entered in the Circuit court of Cook county, July 20, 1874. The orignial bill of review

was filed by Robert C., Katherine, and Margaret Taylor, children of Frank C. and Louise Taylor. And the cross bill was filed by Frank C. Taylor, J., and Maria Louise Taylor, Jr., Josephine S. Taylor and Alexander Taylor, infants, and older children of Frank C. and Louise Taylor, Sr. The facts, as they appear from the proof, and which are not disputed, are, that on the 13th of June, 1871, Maria Louise Taylor, being seized in fee of all of lot 4, in block 16, Bushnell's Addition to Chicago, joined, with her husband, Frank C. Taylor, in the execution of a deed of said premises to Ira Scott, to hold upon certain trusts, in the deed set forth, which trusts, so far as it is necessary to state them for the purposes of this case, were, that the property was to be held for the benefit of Mrs. Taylor and the children of the marriage between Frank C. Taylor, her husband, and herself, except that in the event of the death of Mrs. Taylor, and of the children, before the youngest child had reached the age of twenty-one years, Mr. Taylor, or his heirs, should become entitled to the remainder of the estate. The deed of trust contained an express provision, "that no lien, incumbrance, or charge shall be created on said premises," and although there was a provision in the trust deed that the trustee might sell some portion of the premises for the purpose of improving that which was unsold, yet the provision was so guarded as to prohibit the creation of any lien, incumbrance, or charge upon the unsold portion of said premises.

At the time the deed was made there was a house upon the premises, which was occupied by Mr and Mrs. Taylor as their home, this house covering only a comparatively small part of the lot.

When this trust was created three children had been born to Mr. and Mrs. Taylor, and four have since been born, and this bill was filed by the three youngest of the seven children, the three oldest having arrived at lawful age since this bill was filed, and the other four are still minors.

By the great fire of October 8th and 9th, 1871, the house upon the trust premises was destroyed, and the public records of deeds of land titles in the city were also destroyed, and the trust deed itself was for several years supposed to have been destroyed by the same fire, although it had been duly recorded within a few days after its date. In January, 1872, Mr. Taylor borrowed the sum of $30,000 from the Franklin Savings Bank, the principal defendant in this case, for which he gave his own note, payable one year after date, and, to secure the payment of that note, he and his wife executed to Edward Brown a trust deed upon the whole of said lot 4, in block 16. The money so borrowed by Taylor was used in building upon the trust premises a block of five dwelling houses, which cost about $53,700. In January, 1873, Taylor and his wife filed a petition in the Superior court of Cook county, under the provisions of what is known as the "Burnt Records Act" of this state, alleging the making and recording of the deed of trust, the destruction of the records, and the loss of the deed itself, and praying an establishment and confirmation of the trust deed and its terms, as set out in said petition. And such

proceedings were had under this petition; that on the 20th of March, 1873, a decree was entered establishing and confirming what was found, from the proof, to be a substantial copy of the trust deed, but, in fact, omitting the clause which provided that no lien, incumbrance, or charge should be created on the premises, and containing, in place of that clause, a clause that authorized the trustee to make liens for the purpose of rebuilding, etc.

After the entry of this decree, Scott, the trustee, and Taylor and wife made a subdivision and plat of said lot 4, dividing the same into five sub lots, numbered from 1 to 5, inclusive.

On the 22nd of July, 1873, Mr. Scott declined to act longer as trustee, and Taylor and wife filed a bill in the Superior court of Cook county, for the appointment of another trustee, and that such new trustee be empowered to make a loan of money sufficient for the fair value and cost of the improvements made on said lots, and a decree was on the 19th of August, 1873, entered appointing Charles H. Mulliken, trustee, as successor to Mr. Scott, and authorizing him to make a loan to pay Mr. and Mrs. Taylor the cost of the improvements made on the lots, not to exceed $53,700. Mr. Mulliken accepted the trust and on the 23rd of August made four trust deeds covering sub lots 1, 2, 4 and 5 of said subdivision, to Francis S. Howe, trustee, to secure the payment of four notes of $9,000 each given by Mulliken and Mr. and Mrs. Taylor to the Franklin Savings Bank, and on the 1st of January, 1874, Mulliken, the trustee, and Mr. and Mrs. Taylor joined in the execution of another trust deed to Francis S. Howe, to secure the individual note of Taylor to the Franklin Savings Bank for $2,875.

The proceeds of the four first mentioned trust deeds were used to take up the $30,000 loan made by Taylor from the bank in June, 1872, and the last mentioned trust deed for $2,875 was to secure a personal indebtedness of Taylors' to the bank, not growing, as the proof shows, out of the rebuilding.

In September, 1873, a petition for a mechanics lien was filed by Henry Gilsdorff for labor and materials used in the construction of the block of new buildings, in which petition other contractors intervened. This case came to hearing in July, 1874, and resulted in a decree, establishing liens on the premises in favor of Gilsdorff and those who had intervened with him, which decree was afterwards affirmed by the Supreme court of this state at the September term, 1874.

In June, 1876, the Franklin Savings Bank filed in this court a bill to foreclose the four trust deeds of August 23, 1873, which, after default of some of the adult defendants, and answers by the guardian *ad litem* of the infant defendants, was, in May, 1877, referred to a master to take proofs and report. In June, 1877, the original deed of trust to Scott was found and very soon thereafter bills of review were filed in the case under the "Burnt Records Act," and in the suit brought for the appointment of a new trustee in place of Scott, in which the decree appointed Mulliken, trustee, and authorized him to make the loan to pay for building the five houses, which bills of

review resulted in decrees setting aside the former decrees in those cases, but the decree in the case, under which Mulliken was appointed trustee, contained a clause that nothing therein, ordered or contained, should deprive the Franklin Savings Bank, or Howe, the trustee in the said trust deeds, of any interest they, or either of them, might have in the trust estate, the claims of the bank and said Howe not having been heard or adjudicated.

After the original trust deed was found, the bank filed a supplemental bill in the foreclosure case, which was answered before a report was made by the master. Terms of settlement or compromise were made between the bank and the guardian *ad litem* of the infant defendants then in court, which included all the children then born, and all the children of the parents, except Margaret, the youngest. By this compromise, the children were to have one of the sub lots and the house thereon, free and clear of all incumbrance. On the 29th of April, 1880, a decree of foreclosure was entered in the foreclosure suits in pursuance of the terms of this agreement, which by its terms was a foreclosure of the four trust deeds on sub lots 1, 2, 4 and 5 respectively, and of the trust deed securing the $2,875 (Taylor's individual debt), on the whole four lots, and a sale was directed to be made by one of the masters' of the court of the sub lots 1, 2, 4 and 5 to pay the amount found due by said decrees on the said respective trust deeds. The lien of the several trust deeds on the premises, covered by them respectively, being found by the decree to be subject to the prior mechanics lien established by the decree in the Gilsdorff case.

A sale was made under this decree on the 16th of June, 1880, and each house and lot sold to the bank and certificates of purchase given by the master to the bank as such purchaser, and afterwards, to consummate the settlement made with the guardian *ad litem* of the infant children, the certificate of purchase for lot 2 at such masters' sale, was assigned to the guardian *ad litem*, and by him assigned to the six children then born, and a deed was in due time made to them by the master, and a deed was also made to the bank of lots 1, 4 and 5.

After the affirmance by the Supreme court of the decree in the mechanics lien case, the bank purchased the decree in that case, and was the owner of such decree at the time of the entry of the decree in the foreclosure case and at the time of the alleged compromise and settlement, and on the 15th of July, 1881, a sale was made under the mechanics lien decrees, and the defendant H. H. Thomas, who was then the president of the bank, became the purchaser of the three sub lots 1, 4 and 5, and it is admitted that this purchase was made by Mr. Thomas for the bank, and that he now holds the title solely for the bank and has no individual interest therein.

It also appears that the three oldest children were made defendants to the bill for the restoration of the deed of trust under the "Burnt Records Act," and appeared and answered by guardian *ad litem;* that the four oldest children were made parties to and appeared and an-

swered by guardian *ad litem*, in the bill for the appointment of a new trustee, and that under the mechanics lien trust the four oldest children were made parties defendant and appeared, and answered by guardian *ad litem*. But, the Supreme court in the suits brought by Julia S. Taylor against the bank, to set aside the decree in the mechanics lien suit, as far as it affected lot 3 in said subdivision, found that there was no service upon the infant defendants in the mechanics lien case. It also appears that the youngest child, Margaret, who is one of the original complainants in this case, was born after the entry of the decree in the foreclosure case. It also appears that all the seven children, born of the marriage of Mr. and Mrs. Taylor, who are parties to the original and cross bills in this case, were minors at the time the original and cross bills were filed.

The contention on the part of the complainants is, that all the four trust deeds, given by Mulliken, trustee, with the consent of Mr. and Mrs. Taylor, on the four houses and lots, and also the decree in the mechanics lien case, are all void and inoperative as against the complainants and cross-complainants, under the clause in the deed of trust to Scott, which prohibited the creation of any lien, incumbrance, or charge on the trust premises, that they are not bound by the decree in the foreclosure case because the decree was by consent, and they were not competent to give such consent and that the decree in the mechanics lien case did not bind the infant defendants therein because there was no service of process on them, and also because such decree was obtained by imposing upon the courts the false deed established by the decree in the "Burnt Records Act," of all which and of the true terms of the genuine trust deed it is claimed the petitioners in the mechanics lien case, and the bank and its president, Mr. Thomas, were bound to take notice. While, on the part of the defendant, the Franklin Savings Bank and Mr. Thomas, it is contended that the three oldest of the minor children were made parties to the mechanics lien case and appeared and answered by guardian *ad litem*, and are bound by said decree and that the proof does not show that they were not served with process in the case, and that the children, so brought into the mechanics lien case, were of the same class as to their rights and interest in the property as the after born children, and that the after born children were properly and sufficiently represented in the mechanics lien suit, by their older brothers and sisters, and that they are, therefore, bound by such representation of their class, that the three oldest children were parties to the proceeding under the "Burnt Records Act," which established by the decree of the court the power on the part of the trustee to loan money and give the securities in question. That all the children of Frank C. and Maria L. Taylor were made parties in the foreclosure suit, except Margaret, who was born after the entry of the decree in said case, and that they appeared in said case, by their guardian *ad litem*, and answered, and the decree in said case is binding on them, and each of them, and on the after-born child, Margaret, as she was represented in her class.

I do not deem it necessary to go into an elaborate discussion of the questions of law, arising upon the facts, which have been so ably presented in the briefs of counsel.

It is undoubtedly settled beyond question by the decisions of the Supreme court of Illinois, which controls this court in all cases involving rights to real estate in this state, that the record of the deed of trust to Mr. Scott was notice to all persons dealing with respect to the trust property that no valid lien could be created upon that property either by the trustee, or any of the beneficiaries under the trust, and that the destruction of the record of the deed of trust did not change the rule as to its effect as notice.

*Shannon* v. *Hall*, 72 Ill., 355.
*Shannon* v. *Hall*, 85 Ill., 343.
*Gammon* v. *Hodges*, 73 Ill., 140.
*Steel* v. *Boone*, 75 Ill., 457.
*Heaton* v. *Prather*, 84 Ill., 330.
*Curyea* v. *Berry*, Ibid., 600.
*Franklin Savings Bank* v. *Taylor*, 131 Ill., 386.

It is also clear from the admitted facts that the loan of $30,000 made by the bank to Frank C. Taylor in June, 1882, was made upon the credit of Taylor alone, and not any valid security upon the trust property, that the four trust deeds securing $9,000 each, and the $2,875 trust deed made by Mulliken, trustee, with the consent of Mr. and Mrs. Taylor, did not create a valid lien upon the trust property, as such transaction would have been in express contravention of the deed of trust under which Mulliken held the property.

It is insisted on the part of the defendants that the decrees in the "Burnt Records Act" case and in the case appointing a new trustee, fully empowered the making of the five trust deeds involved in the foreclosure suit, that four of the children were parties to those suits and bound by the terms thereof, and the other unborn children were bound by representation, and that those decrees remained in full force at the time such trust deeds were made.

It may be, and probably is true, that so long as those decrees, as well as the decree in the mechanics lien case, are allowed to stand, they are binding by their terms upon the infant defendants as well as upon the adult parties, but the essential question is, can these infants attack those decrees and have them set aside as against parties who acted under them while they were in force?

I consider the law to be well settled that the infants can, by an original bill in the nature of a bill of review, attack any decree entered against them during their infancy and have it set aside for fraud or error of fact.

Daniels Chancery Practice, 169, 170.
*Rogers* v. *Smith*, 4 Pennsylvania, 93.
*Mills* v. *Dennis*, 3 Johnson Chancery, 366.
*Massey* v. *Donelson*, 8 Ohio, 337.
*Matthews* v. *Dobschutz*, 73 Ill., 438.
*Gooch* v. *Green*, 102 Ill., 509.
*Lloyd* v. *Kirkwood*, 112 Ill., 337.
*Kuchenbeiser* v. *Beckert*, 41 Ills., 172.
*Kingsbury* v. *Buckner*, 134 U. S., 650.

It is also well established, I think, by the authorities, that any consenting decree entered against a minor is not binding and can be attacked by original bill for the purpose of setting it aside, and in support of this practice no other authority need be cited than that of *Kingsbury* v. *Buckner*, above cited.

Assuming, as I do, the right of these minors to attack this bill of foreclosure by this bill, I think the court must assume that had all the facts touching the validity of the securities involved in that suit been presented to the court, the court must have held that the securities sought to be foreclosed and enforced in that proceeding were invalid and have dismissed that suit for want of equity as against the infant defendant, and as the court was prevented from doing so and was led into making an inequitable decree by the unauthorized agreement of the guardian *ad litem*, it will, in this suit now brought by the minors themselves, enter such decree as should have been entered in the original foreclosure case.

As to the Gilsdorff decree and the sale under it, I can see no reason why it is not properly the subject of attack by this bill. Undoubtedly, at the time that decree was rendered, the court properly assumed that it was justified by the deed of trust, as restored by the decree of March 29, 1873, under the "Burnt Records Act," but that decree was based upon a most palpable error of fact, of which the bank and its president were charged with notice, and it seems to me the right of these infants to set aside that decree, and all that has been done under it is palpable.

To set aside these sales under the foreclosure and mechanics lien decrees, will, without doubt, work a hardship upon the bank that has invested a large sum of money on the faith that the four $9,000 mortgages were valid, but the court cannot escape the conclusion that there was ample constructive notice that the trustee had no power to make those mortgages, as that no valid mechanics lien could be created on the trust estate, and to hold that these encumbrances are valid as against the children would make precedent for defeating the rights of many more minor children.

[Endorsed]: Filed July 13, 1891.
WM. H. BRADLEY, *Clerk*.

Afterward, to-wit: On the 10th day of August, in the July Term of said court, 1891, in the record of the proceedings thereof in said entitled cause, before Honorable Henry W. Blodgett, District Judge, is the following entry, to-wit:

DECREE.

Robert C. Taylor, Katherine Taylor and Margaret Taylor
*vs.*
Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor and Ira Scott,
and
Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, and Alexander Taylor.
*vs.*
Franklin Savings Bank, Hiram H. Thomas, Ira Scott, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Robert Taylor, Katherine Taylor, and Margaret Taylor.

*In chancery.*
*Bill.*

*Cross Bill.*

And now come the complainants and cross-complainants, by Mr. Kendall and Mr. Pope, their solicitors, and the defendants, the Franklin Savings Bank and Hiram H. Thomas, by Messrs. Swift, Campbell and Jones, their solicitors, and this cause having been heretofore heard upon pleadings, proofs and arguments of counsel and taken under advisement, and the court having now fully considered the same, doth find and declare that the said several deeds of trust given by the said Charles H. Mulliken, as trustee, in which the said Frank C. Taylor and Maria L. Taylor, his wife, joined in the execution thereof, to the said Francis S. Howe, as trustee, and Edward H. Russell, as successor in trust, as described in the pleadings herein, to secure the payment of the four promissory notes of nine thousand dollars each, payable to the said Franklin Savings Bank, and also the deed of trust given by the said Mulliken, as trustee, (in which the said Frank C. Taylor and his said wife joined), to the said Francis S. Howe, as trustee, as described in the pleadings herein to secure the payment of the note of Frank C. Taylor for two thousand eight hundred and seventy-five dollars, payable to the order of the said savings bank, were made contrary to the terms of the trust created by said deed to Ira Scott and without any power or authority to

make the same, and that all of the said trust deeds were and are void and no valid lien was created thereby upon the land and premises therein described.

And the court doth further find and declare that the said decree of foreclosure described in the pleadings herein was made by consent of parties and pursuant to an agreement made and entered into by and between the said Franklin Savings Bank and the guardian *ad litem* of the infant defendants, and that the said guardian in so doing acted in excess of his powers and that said agreement is not valid and binding upon the complainants and cross-complainants in this cause, that the said decree of foreclosure and sale heretofore made and entered in this court, upon the amended and supplemental bill of complaint of the said Franklin Savings Bank is erroneous and ought to be reviewed, reversed and set aside, and therefore it is entered now and herein and hereby determined, adjudged and decreed by this court that the said decree of foreclosure and sale above referred to is reviewed, reversed and set aside, and the bill and supplemental bill in that cause filed, being number 13,751, on the general docket of this court, is hereby dismissed for want of equity, and the court doth further order, adjudge and decree that the said deeds from the master in chancery of this court to the said Franklin Savings Bank and of the infant defendants in said foreclosure suit are null and void and of no force and effect whatever, and that said deeds be surrendered to the clerk of this court to be canceled.

This court doth further find and declare that no mechanics lien upon said trust property and estate was created by virtue of the contracts set up by the said Gilsdorff, Sullivan, Baumann and others in the said suit of Gilsdorff and others in the Circuit court of Cook county, Illinois, referred to in the pleadings herein, and the court doth also find that the decree in said mechanics lien case was in 1875, duly sold and assigned to the Franklin Saving Bank and was held and owned by said bank at the time of the sale of the property in question under said decree, and it is therefore ordered, adjudged and decreed that the complainants and cross-complainants herein are not bound by the judgment and decree of the said Circuit court of Cook county, entered in the suit of Gilsdorff and others against Taylor and others, that the said Hiram H. Thomas purchased at said sale under said decree in said suit of Gilfsdorff and others for the sole use and benefit of said bank and that the sales and deeds of said trust property made by the master in chancery of the said Circuit court of Cook county to the said defendant H. H. Thomas, in pursuance of said judgment and decree in said mechanics lien suit, are null and void and of no force and effect whatever, and that the said deeds be surrendered to the clerk of this court to be canceled.

And this court doth further declare that the said deed of quit claim given by the said Charles H. Mulliken, as trustee, and the said Frank C. Taylor and Maria L. Taylor, his wife, to the said Hiram H. Thomas, bearing date July 20, 1880, and recorded in the recorder's office of said county of Cook on the 23rd day of September, 1880,

was given for the use and benefit of said bank in pursuance of the aforesaid terms of settlement of said foreclosure suit, and only in consummation of said settlement; that said deed was given contrary to the expressed provisions of said trust deed to Ira Scott, and created no lien, charge or incumbrance upon the land and premises therein described, and is a cloud upon the title to said land; and it is further ordered and decreed that the said Franklin Savings Bank and the said Hiram H. Thomas, do, within thirty days from the entry of this decree, release and quit claim by proper deed or deeds, to the trustee hereby appointed, the said lots of land in said deed to Hiram H. Thomas, described, so as to fully vest the fee of the same in the said trustee upon the trusts in said original deed to Ira Scott, declared, and that, in default of so doing, such deed be made by a master in chancery of this court with like force and effect as though made by said bank and said Thomas. But it is not intended hereby to determine the effect, either legal or equitable, of the said quit claim deed, or the decree and sale in the Gilsdorff case and in the foreclosure case as to the rights of said Frank C. Taylor and Maria Louise Taylor, or either of them, to receive from the trustee the income of said trust estate, leaving such questions to be decided in any future case which may be brought by either said Frank and Maria Louise Taylor, or either of them, or said bank, as they may be advised.

And, it appearing to the court from the evidence herein, that the said Ira Scott and Francis B. Peabody have declined to act further as trustees under said deed of trust and have been discharged therefrom by the Superior court of Cook county, Illinois, and that the said Charles H. Mulliken, as successor in trust to said Scott and Peabody, also declines to act further as such trustee, this court doth hereby appoint Henry W. Leman to be trustee in place of the said Scott, Peabody and Mulliken, to take and hold the title and possession of said trust property described in said trust deed to Ira Scott, except said lot three (3), upon the trusts in said deed declared, and the said Mulliken is hereby ordered and directed to convey the trust estate vested in him so as to vest the same in the said new trustee herein appointed upon the trusts mentioned and declared in said original trust deed to Ira Scott and let such conveyance be settled by the court.

It is further ordered and decreed that the said Franklin Savings Bank, its agents and attorneys, do forthwith surrender the possession of said lands and premises to the said Henry W. Leman, as trustee, and assign, transfer and set over to said Henry W. Leman, as trustee, any and all leases of said premises now in force; and it is ordered that all tenants in possession thereof under said Franklin Savings Bank do attorn and pay rent to said Henry W. Leman, as such trustee, to the end that said trustee shall and may from henceforth receive and collect the income of said trust property, to be applied, according to the terms of said trust deed to Ira Scott, or as the same may hereafter be adjudged.

And it is further ordered that said Henry W. Leman give bond in the penal sum of thirty thousand dollars with surety, to be approved

by the court, conditioned for the faithful performance of his duties as such trustee.

It is ordered that the defendant, the Franklin Savings Bank, pay to the complainants and cross-complainants their costs of this suit, including the cost of printing the abstract of pleadings and evidence, such costs to be taxed by the clerk of this court, and that the complainants have judgment therefor.

And it is further ordered and decreed that the trustee hereby appointed, or his successor in trust, do pay out of the first moneys coming to his hands from the income of said trust property, the further expenses of this suit, as follows, to-wit: To Robert B. Kendall, of counsel for said complainants, the sum of $2,083.33 and to Charles E. Pope, of counsel for said cross-complainants, the sum of $416.67.

It is further ordered and decreed that the said Franklin Savings Bank do account for and pay over to said trustee, hereby appointed, all money received from the rents, issues and profits of said lots one (1), four (4) and five (5) during the time said bank has been in the possession thereof, and also account for and pay over to said trustee all money received from the receiver of said trust property appointed by this court in said foreclosure suit, after deducting from said moneys all money expended by said bank for taxes, assessments, insurance and necessary repairs upon said property, except such portion of said moneys so received from said receiver as was paid to the guardian *ad litem* of the infant defendants in said foreclosure suit in pursuance of the terms of settlement, and this cause is referred to E. B. Sherman, Esq., a master in chancery of this court, to take and state such an account and report the same to this court.

And it further appearing to the court that the said Franklin Savings Bank did on or about the 19th day of March, 1875, purchase from the said Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann all their interest in the decree rendered by the Circuit court of Cook county, Illinois, in the said mechanics lien suit mentioned in the pleadings and proofs herein, and that they had at the time of the commencement of this suit no interest in, or claim upon said trust property. It is therefore, ordered that the original and amended bill and the cross bill be dismissed as to the said Gilsdorff, Sullivan, and Baumann, and each of them, and that they have and recover of the said complainants their costs in this behalf expended or taxed by the clerk of this court and have execution therefor.

This court doth further find and declare that the certificate of sale of said lot two (2) issued by the master in chancery of this court to said Franklin Savings Bank was assigned by said bank to Orville Peckham, as guardian *ad litem*, pursuant to the terms of the said agreement for settlement of said foreclosure suit, that the said certificate of sale was afterwards assigned by the said Peckham to the said Frank C. Taylor, Jr., Maria Louise Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert Taylor, pursuant to a decree of the Circuit court of Cook county, Illinois, in a

suit instituted by the said Peckham for direction as to the disposition of said certificate of sale, and that a deed of said lot two (2) was afterwards made by the master to the above named infant defendants in said foreclosure suit. And that said transfer of said title to lot two to said Frank C. Jr., Maria Louise, Jr., Josephine S., Alexander, Katherine and Robert was in violation of the terms of said trust deed to Ira Scott, and should be set aside and the title to said lot vested in the trustee.

And it appearing to the court that the said Frank C. Taylor, Jr., Maria Louise Taylor, Jr., and Josephine S. Taylor, defendants and cross-complainants herein, have attained to full and lawful age since the commencement of this suit, it is therefore ordered that they make, execute and deliver to the said trustee herein appointed a deed of release and quit claim of all right, title and interest in and to said lot two (2), acquired by virtue of said deed of the master in chancery of this court to the infant defendants, in said foreclosure suit, pursuant to the sale under said foreclosure decree; and it is further ordered that all the right, title and interest of the said Alexander Taylor, Katherine Taylor, Robert C. Taylor, and Margaret Taylor in and to said lot two (2) acquired by them under and by virtue of said masters' deed be conveyed by a deed of a master in chancery of this court to the said trustee.

And thereupon, the said defendants, the Franklin Savings Bank, Hiram H. Thomas, James B. Sullivan, Henry Gilsdorff, Frederick Baumann, and Edward Baumann pray an appeal, which is allowed upon the said defendants filing an appeal bond in the penal sum of $30,000 within twenty-five days with sureties to be approved by this court.

On the same day, to-wit: On the 10th day of August, 1891, came The Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, and Edward Baumann, by their solicitors, and filed in said clerk's office their assignment of errors in said entitled cause, which said assignment of errors are in the words and figures following, to-wit:

## Assignment of Errors.

### In the United States Circuit Court of Appeals for the Seventh Circuit.

The Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann,
*Appellants.*
*vs.*
Robert C. Taylor, Katherine Taylor, Margaret Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, Ira Scott, and Francis B. Peabody,
*Appellees.*

And now come the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann, appellants, by Swift, Campbell & Jones, their attorneys, and say, that in the record and proceedings and in rendering the decree aforesaid there is manifest error in this, to-wit:

*First:* The court erred in finding that the said several deeds of trust given by the said Charles H. Mulliken as trustee, in which the said Frank C. Taylor and Maria L. Taylor, his wife, joined, to the said Francis S. Howe, as trustee, are void, and that no valid lien was created thereby upon the lands and premises therein described.

*Second:* The court erred in reviewing, reversing and setting aside the said decree of foreclosure in the said suit No. 13,751 on the general docket of the said Circuit court and in decreeing that the said deeds executed by the master in chancery in accordance with said decree of foreclosure are null and void.

*Third:* The court erred in dismissing for want of equity the bill and supplemental bill of complaint in said foreclosure proceeding being No. 13,751 on the general docket of the said Circuit court.

*Fourth:* The court erred in decreeing that the complainants and cross-complainants below are not bound by the judgment and decree of the said Circuit court of Cook county entered in the said suit of Gilsdorff *et al* against Taylor *et al*, and that the sales and deeds of said trust property made by the master in chancery to the appellant, Hiram H. Thomas, in pursuance of said judgment and decree in said mechanic's lien suit, are null and void.

*Fifth:* The court erred in decreeing that the said quit claim deed made by the said Charles H. Mulliken, Frank C. Taylor and Maria L. Taylor, to the said Hiram H. Thomas, bearing date July 20, 1880, created no lien, charge or incumbrance upon the land and premises,

therein described, and is a cloud upon the title of said land, and in decreeing that the said Franklin Savings Bank and Hiram H. Thomas release and quit-claim the said premises to the trustee appointed by the said court.

*Sixth:* The court erred in decreeing that the said Franklin Savings Bank surrendered possession of said premises to the said trustee, and transfer to said trustee all leases of said premises and in requiring all tenants in possession of said premises to attorn and pay rent to the said trustee.

*Seventh:* The court erred in decreeing that the Franklin Savings Bank account for and pay over to the said trustee all money received from the rents, issues and profits of said lots one (1), four (4), and five (5), during the time the said bank has been in possession thereof, and also account for and pay over to said trustee all money received from the receiver of said trust property appointed in said foreclosure suit, excepting such portions of said moneys as was paid over by said bank to said Peckham as guardian *ad litem*.

*Eighth:* The court erred in allowing complainants' solicitors twenty-five hundred dollars ($2,500) for their solicitor's fees to be paid out of the first money coming to the hands of the trustee from the income of said trust property.

*Ninth:* The court erred in finding that the said complainants are entitled to any relief under their said amended bill of complaint.

*Tenth:* The court erred in finding that the cross-complainants are entitled to any relief under their said cross-bill of complaint. By reason whereof the said appellants pray that said decree may be reversed.

By SWIFT, CAMPBELL & JONES,

*Solicitors for said Appellants.*

[Endorsed]: Filed Aug. 10, 1891.

WM. H. BRADLEY, *Clerk.*

Afterward, to-wit: On the 28th day of August, 1891, there was filed in said clerk's office, an appeal bond in said entitled cause, which said bond is in the words and figures following, to-wit:

APPEAL BOND.

Know all men by these presents, that we, the Franklin Savings Bank, a corporation existing under and by virtue of the laws of the state of Rhode Island, and having its principal office at Pawtucket, in the said state of Rhode Island, as principal, and the American Surety Company, of New York, a corporation organized and exist-

ing under and by virtue of the laws of the state of New York, as surety, are held and firmly bound unto Robert C. Taylor, Katherine Taylor, Margaret Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, and Alexander Taylor, in the full and just sum of thirty thousand dollars ($30,000) to be paid to the said Robert C. Taylor, Katherine Taylor, Margaret Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, and Alexander Taylor, their executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves and our successors jointly and severally by these presents. Sealed with our seals and dated this 24th day of August, A. D. 1891.

Whereas, lately at a term of the Circuit court of the United States for the Northern Division of the Northern district of Illinois, commencing on the first Monday of July, A. D. 1891, in a suit pending in said court, between the said Robert C. Taylor, Katherine Taylor and Margaret Taylor, as complainants, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, as cross-complainants, and the Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann and others, as respondents, both to the bill of said complainants and to the cross-bill of said cross-complainants, a decree was rendered against the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann and the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann having prayed for and obtained an appeal to the United States Court of Appeals for the seventh Circuit to reverse the said decree in the aforesaid suit. Now, therefore, the condition of the above obligation is such, that if the said Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and Edward Baumann shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

The words "organized and" on first page first erased.

[SEAL] FRANKLIN SAVINGS BANK.
GEO. T. NEWELL,
*Treas.*
By AUGUSTINE A. MANN,
*President.*

Witness to the above signature, J. F. Browning.

[SEAL] AMERICAN SURETY COMPANY OF NEW YORK.
By JESSE SPALDING,
*Vice-President.*
ROSWELL H. MASON,
*Asst. Secy.*

Approved by H. W. Blodgett, Judge.

[Endorsed]: Filed August 28, 1891.
WM. H. BRADLEY, *Clerk.*

By an agreement examination adjourned to Friday, January 11, 1889, at 2 o'clock P. M.

JANUARY 19, 1889.

Examination resumed pursuant to agreement.

Present: Mr. KENDALL, for complainant, and Mr. SWIFT, for defendant.

It is stipulated that as to any documents offered in evidence, a copy, certified by the master, may be used instead of the original, the original to be produced for copying by the parties introducing the same, and to be returned by the party producing it to the files, after such copy has been made. These documents and files to be produced before the master within the time limited in the order for taking evidence, by the respective parties.

By Mr. KENDALL: I now offer in evidence, under the foregoing stipulation, as complainants' "Exhibit No. 1," a trust deed from Maria Louise Taylor and Frank C. Taylor to Ira Scott, dated June 13, 1871, recorded on the same day in book 673 of deeds, page 1, and re-recorded on the 3d day of July, 1877, in book 625 of records, page 287, which is as follows:

"This indenture, made this thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-one, between Maria Louise Taylor and Frank C. Taylor, her husband, of the city of Chicago, in the county of Cook, and state of Illinois, party of the first part, and Ira Scott, of the same place, party of the second part.

"Witnesseth: That the said party of the first part, in consideration of the sum of one dollar, to them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the trusts and provisions hereinafter contained, have granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien and confirm, unto the said party of the second part, and to his successor, successors and assigns, forever, all the following-described lot, piece or parcel of land, to-wit: That part of block sixteen (16), in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the east line of Dearborn street, three hundred (300) feet north of the southwest corner of said block; thence running north on the east line of Dearborn street one hundred and three (103) feet, more or less, to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence

south parallel with Dearborn street one hundred and three (103) feet, more or less; thence west parallel with Maple street one hundred and fifty (150) feet, to the place of beginning, in the city of Chicago, in the county of Cook, and state of Illinois, the same being lot four (4) in the plat of subdivision of block sixteen (16), Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, *in trust nevertheless*, upon the following specific trusts, namely:

"Firstly, for the use and benefit of the said Maria Louise Taylor, and the children of the said Frank C. and Maria Louise Taylor, to be used and occupied by them as a homestead, or place of residence, subject, however, to the trusts and uses hereinafter contained, it being, however, expressly provided and understood that the improvements now standing on said premises may be added to, altered or removed, and new buildings erected thereon, provided, *always*, there shall be no lien, incumbrance or charge created thereby on said premises; and it is further provided, that the whole or a portion of said premises may be used for the purpose of deriving a remedy therefrom, as is hereinafter provided, and that a portion only of said premises may be used as such homestead as aforesaid.

And it is also hereby further provided that said Ira Scott, trustee, and his successors in trust, shall not be charged with the duty of paying the taxes and assessments that may be levied or assessed on said premises, so long as the whole of said premises shall be used as a homestead, and so long as no sufficient rent, issues or profits therefrom, or any portion thereof, shall be received by said Ira Scott, or his successors in trust.

"Secondly, and upon this further trust, namely: The said Ira Scott, or his successors in trust, shall bargain, sell and convey a portion of said premises for the purpose of procuring funds to build upon and improve the remainder thereof, during the joint lives of the said Frank C. and Maria Louise Taylor, upon their joint written request, and such request shall be signified by their joining with such trustee in the execution of the deed or deeds of conveyance. Or in the event of the death of said Frank C. Taylor, said Maria Louise Taylor and a child or children of them surviving, until the youngest of such children then living shall become of age, or should thereafter all of such children die before such youngest child should attain his or her majority, then until such event the said Ira Scott, or his successors in trust, may at any time when, in the judgment of said trustee, it would be for the best interests of said Maria Louise Taylor and said children, bargain, sell and con-

vey, by full and proper deed or deeds of conveyance, such a portion of said premises, for such price or prices, and upon such terms as to said Ira Scott, or his successors in trust, shall seem fit and proper, for the purpose of obtaining funds to build upon and improve the remainder of said premises; and said Ira Scott, or his successors in trust, shall at once, with the proceeds of such sale, erect on that portion of said premises remaining unsold such buildings and improvements as said Frank C. Taylor and Maria Louise Taylor jointly shall direct, or in case said Maria Louise Taylor shall survive as last aforesaid, as the said Ira Scott. or his successors in trust shall deem best; provided, always, that no charge, lien or incumbrance on said premises, or any portion thereof, shall be thereby created by said Ira Scott, or his successors in trust.

"Thirdly: And said Ira Scott, and his successors in trust, are also hereby authorized and empowered to lease said premises, or any portion thereof, provided no lease shall be made for a longer period than three years, and to collect and to receive the rents, issues and profits thereof during the joint lives of the said Frank C. and Maria Louise Taylor, upon their joint written request, and such request shall be signified by their joining with such trustee in the execution of the leases; or in the event of the death of said Frank C. Taylor, the said Maria Louise Taylor, and a child or children of them surviving, until the youngest of such children then living become of age, or should all of said children thereafter die before such youngest child shall have attained his or her majority, then until such event, the said Ira Scott, or his successors in trust, may, at the discretion of such trustee, lease said premises then remaining unsold, or any portion thereof, and collect and receive the rents, issues and profits thereof, provided, that the same are not used as a homestead as aforesaid, and further provided that no such lease shall be made for a longer period than three (3) years; and the said rents, issues and profits so collected and received the said Ira Scott and his successors in trust shall apply and pay over as follows: First, out of the same shall first be paid all costs herein provided for, and all taxes and assessments that shall be levied or assessed on said premises, or any portion thereof, which shall remain unsold, as the same shall become due and payable. Second, during the joint lives of the said Frank C. and Maria Louise Taylor all of the remainder of said rents, issues and profits, after the payment of said costs, taxes and assessments, shall be paid to said Maria Louise Taylor, for her sole use and benefit, upon her sole and separate receipt in writing therefor. Third, in the event of the death of the said Frank C. Taylor, the said Maria Louise Taylor, and a child or children of the said Frank C. and Maria Louise Taylor him surviving, for, during and until

STATE OF ILLINOIS, }
COOK COUNTY, } ss.
CITY OF CHICAGO. }

I, Timothy J. Mapes, a notary public in and for said city, in said county and state, do hereby certify that Maria Louise Taylor and Frank C. Taylor, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument in writing as their free and voluntary act, for the uses and purposes therein set forth; and the said Maria Louise Taylor, wife of the said Frank C. Taylor, having been by me examined, separate and apart, and out of hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this state, acknowledged that she had freely and voluntarily executed the same and relinquished her dower in the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this state relating to exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this }
13th day of June, A. D. 1871. }

[NOTARIAL SEAL.]

TIMOTHY J. MAPES,
*Notary Public.*

On the back of this deed are the following file marks:

STATE OF ILLINOIS, } ss. No. 101,023.
COOK COUNTY. }

Filed for record June 15, A. D. 1871, at 10 o'clock A. M., and recorded in book 673 of deeds, page 1.

NORMAN T. GASSETTE,
*Recorder.*

said Ira Scott, or his successors in trust, shall invest in bond and mortgage upon unincumbered real estate in said city of Chicago, in the name of, and as such trustee. and the interest or income derived therefrom, the said Ira Scott, or his successors in trust, shall pay to the said Maria Louise Taylor, as the same shall be received, during the remainder of her natural life, and upon her death, the said Ira Scott, or his successors in trust, shall assign over, transfer and surrender the said bonds and mortgages absolutely, to the heirs at law of the said Frank C. Taylor, according to the statute of descent. 2nd: In the event of the death of the said Maria Louise Taylor, leaving her surviving the said Frank C. Taylor, and a child or children of the said Frank C. and Maria Louise Taylor, then the said Ira Scott, or his successors in trust, shall either continue to hold such premises in trust during the joint lifetime of the said Frank C. Taylor and any of said children, for a homestead as aforesaid, or to lease the same, and collect the rents, issues and profits as hereinbefore provided, upon the written request to lease, of said Frank C. Taylor, which request shall be expressed by his joining in the execution of the lease ; or said Ira Scott, or his successors in trust, shall bargain, sell and convey that portion of said premises which shall then remain unsold, at the written request of said Frank C. Taylor, which request shall be expressed by the said Frank C. Taylor, joining in the execution of the deed or deeds of conveyance, and the proceeds of such sale, the said Ira Scott, or his successors in trust, shall reinvest in unincumbered real estate in said city of Chicago, or in bond and mortgage, secured by unincumbered real estate in said city, in the name of, and as such trustee, and hold the same under this trust, and during the joint lives of said Frank C. Taylor and any of said children, after paying all costs, taxes and assessments, as herein provided, the said Ira Scott, or his successors in trust, shall equally divide among, and pay the remainder of said rents, issues and profits as they shall be received, to said children, or their heirs or executors, *per stirpes*, and not *per capita*. And upon the death of said Frank C. Taylor, the said Ira Scott, or his successors in trust, shall, by proper deed or deeds of conveyance, assign and convey, absolutely, and in fee simple, such portion of said premises as shall then remain unsold, or the premises which shall have been purchased as aforesaid, to said children, their heirs or executors, as tenants in common, in equal proportion, and they shall take *per stirpes*, and not *per capita* ; or if the said premises shall have been sold, and the proceeds invested in bond and mortgage as aforesaid, then upon the death of said Frank C. Taylor, said Ira Scott, or his successors in trust, shall assign over and transfer said bonds and mortgages to said children, their heirs or

executors, fully and absolutely, share and share alike, and they shall take *per stirpes*, and not *per capita*. 3rd: In the event that the youngest child of said Frank C. and Maria Louise Taylor shall become of age after the death of both parents, said Ira Scott, or his successors in trust, shall convey by proper deed or deeds of conveyance, in fee simple, discharged of the trusts herein created, the whole of the premises which shall then remain unsold, to said children, their heirs or executors, as tenants in common, in equal proportions, and they shall take *per stirpes*, and not *per capita*. 4th: In the event of the death of the said Maria Louise Taylor, the said Frank C. Taylor, but no child of them her surviving, and also in the event of the death of all of said children, subsequent to the death of said Maria Louise Taylor, said Frank C. Taylor them and her surviving, the said Ira Scott, or his successors in trust, shall at once convey, in fee simple, discharged of all trusts hereby created, the above described premises, or so much thereof as shall then remain unsold, by proper deed or deeds of conveyance, to said Frank C. Taylor and his heirs and assigns forever. 5th: In the event of the death of said Frank C. Taylor, leaving him surviving the said Maria Louise Taylor, but no child of the said Frank C. and Maria Louise Taylor; and also in the event of the death of all of said children before the youngest child thereof shall have become of age, and subsequent to the death of said Frank C. Taylor, the said Maria Louise Taylor, him and them surviving, the said Ira Scott, or his successors in trust, shall bargain, sell and convey all of said premises which shall then remain unsold, by proper deed or deeds of conveyance, for such price or prices and upon such terms as shall to said Ira Scott, or his successors in trust, seem best and proper, and out of the proceeds of such sale or sales, the said Ira Scott, or his successors in trust shall first retain an amount (if the same shall be sufficient, and the whole, if the same shall be insufficient), which being invested in bond and mortgage as hereinafter provided for, shall bring an annual income of three thousand dollars ($3,000), and the remainder of the proceeds of such sale or sales, if any there shall be, the said Ira Scott, or his successors in trust, shall pay over to the heirs at law of said Frank C. Taylor, who shall take the same according to the statute of descent and the amount so as last aforesaid retained, the said Ira Scott, or his successors in trust, shall invest in bond and mortgage upon unincumbered real estate in said city of Chicago, in the name of and as such trustee, and the interest derived therefrom, the said Ira Scott, or his successors in trust, shall pay to the said Maria Louise Taylor, as the same shall be received during the remainder of her natural life; and upon her death the said Ira Scott, or his successors in trust, shall assign over, transfer and sur-

And your petitioners further show unto your honors that it was further provided by said deed of trust, as will more fully appear by reference to said "Exhibit A," that Francis B. Peabody, one of the defendants herein, should be appointed and made successor in trust to said Scott in said trusts, in the event of death, inability or refusal to act, or removal from the state of said Ira Scott, and that thereupon all the title to said premises, and the trust estate in said trust deed to Ira Scott, mentioned and not theretofore conveyed by the said Ira Scott, in accordance with the trusts, should at once become fully vested in the said Peabody, as a successor in trust, and that said Peabody should become vested with all the power in said deed of trust granted, and subject to all the limitations, in said trust deed imposed on said Ira Scott for the uses and purposes in said trust deed mentioned, and that in the case of the death, inability or refusal to act, or removal out of the state of said Peabody, then upon the application of one or more of the *cestui qui* trust being made to any court of record of said Cook county, such court might appoint a successor in trust, and that thereupon the person so appointed a successor in trust shall become vested with all the powers in said deed of trust conferred on and subject to all the limitations imposed on said Ira Scott and his successors in trust, and that all the estate held by his predecessor under and by virtue of said deed of trust, should at once become fully vested in him as such trustee for the uses and purposes in said deed of trust mentioned.

And your petitioners further show unto your honors that said Ira Scott, as such trustee, has been since the date of said deed of trust, and still is, in the sole and undisputed possession of said premises, and that no person or persons are known to them who are owning or claiming any estate in fee in said lands, or any part thereof, or who are in possession of said lands, or any part thereof, except as herein stated, or to whom said lands, or any part thereof, have been conveyed, and the deed or deeds of such conveyance recorded in the office of the recorder of deeds of said county since the time of said destruction of said public records, and prior to the filing of this petition, other than above herein stated.

And your petitioners further show unto your honors, that said deed of trust was duly acknowledged by both your said petitioners, and was duly recorded in the office of the recorder of deeds of said Cook county on the 15th day of June, A. D. 1871, in book 673 of deeds, at page 1.

And your petitioners further show that in the great fire of October 8 and 9, A. D. 1871, said deed of trust, and also all the contents of the said recorder's office, including that portion of the

the youngest child then living shall become of age; or should thereafter all of said children die before the youngest child then living shall have attained his or her majority, then, until such event, the said Ira Scott, or his successors in trust, shall pay to the said Maria Louise Taylor, out of the remainder of said rents, issues and profits, if any there shall be, after deducting said costs, taxes and assessments, the sum of $3,000 per annum, or the whole of such remainder, should it not exceed that amount, upon her sole and separate receipt in writing therefor, and until the youngest child shall become of age, the residue and remainder of said rents, issues and profits, if any there shall be, the said Ira Scott, or his successors in trust, shall from time to time, as the same shall be received, equally divide among, and pay to all of said children, their guardian or guardians, if any. Fourth: In the event of the death of said Maria Louise Taylor, the said Frank C. Taylor and a child or children of the said Frank C. and Maria Louise Taylor her surviving, for, during and until the youngest child then living shall become of age, or should all of said children thereafter die before such youngest child shall have attained his or her majority, then until such event, unless said premises shall be sold as hereinafter provided, said Ira Scott, or his successors in trust, after deducting the payments for taxes, assessments and costs, as herein provided, shall from time to time, as the same shall be received, equally divide among and pay to all of said children, or their guardian or guardians, if any, the remainder of said rents, issues and profits.

"Fourthly. And these presents are executed upon the further trusts following, namely: 1st: In the event that should the youngest child then living of said Frank C. and Maria Louise Taylor attain his or her majority after the death of said Frank C. Taylor, and while said Maria Louise Taylor shall be still living, the said Ira Scott, or his successors in trust, shall in that event, bargain, sell and convey, by proper deed or deeds of conveyance, all of said premises which shall then remain unsold, at such price or prices, and on such terms as shall to said Ira Scott, or his successors in trust, seem best, and out of the proceeds of such sale, or sales, said Ira Scott, or his successors in trust, shall first retain an amount (if the same shall be sufficient, or the whole if insufficient), which being invested in bond and mortgage as hereinafter provided for, shall bring an annual income of three thousand dollars ($3,000), and the remainder of the proceeds of such sale or sales, if any there shall be, the said Ira Scott, or his successors in trust, shall divide among, and equally pay to the said children, their heirs, or executors, fully and absolutely, *per stirpes* and not *per capita*. And the amount so as aforesaid retained, the

STATE OF ILLINOIS, } ss. No. 14,207.
COOK COUNTY }

Recorded July 3, 1877, 12 o'clock M., book 625 of records, page 287.

JAS. W. BROCKWAY,
*Recorder.*

I also offer in evidence a petition filed in the Superior court of Cook county, to the March term, 1873, a copy of which is attached to the amended bill filed in this cause, as complainant's "Exhibit No. 2," which is as follows:

Filed, January 30, 1873.
A. JACOBSON, *Clerk.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the March Term, A. D. 1873,

IN CHANCERY.

TO THE HONORABLE, THE JUDGES OF SAID COURT, IN CHANCERY SITTING:

Humbly complaining, showeth unto your honors, your petitioners, Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook, and state of Illinois, that your petitioner, Maria L. Taylor, on the 13th day of June, A. D. 1871, was seized and possessed in fee simple, absolute, of the following described premises, situate in said city, in the county of Cook, and state of Illinois, namely: All that part of block sixteen (16), in Bushnell's Addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hun-

dred and fifty (150) feet to an alley; thence south parallel to Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning; the said premises being the same as lot four (4) in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of the subdivision of said block sixteen (16), recorded in the office of the recorder of deeds of said Cook county, in book one hundred and sixty-five (165) of maps, on page 51.

That your said petitioner, Maria L. Taylor, derived her title to the said land by a certain deed, executed by Mark Skinner and Eliphalet W. Blatchford, executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased, to said Maria L. Taylor, dated April 19, A. D. 1871. That being so seized and possessed of said land, your petitioners on the 13th day of June, A. D. 1871, did jointly make, execute and deliver to Ira Scott, of said city of Chicago, and one of the defendants herein, a certain deed of trust, wherein and whereby your said petitioners did bargain, sell and convey said premises to the said Ira Scott, as trustee, and to his successor and successors in trust, and assigns, forever, upon certain trusts therein expressed, a substantial copy of said deed of trust is hereto attached, marked "Exhibit A." and to which your petitioners beg leave to refer, and hereby make a part of their petition.

Your petitioners further state and show unto your Honors that the character and extent of the estate claimed by your petitioners in said premises is fully set forth in said deed of trust, a copy of which is hereto attached, marked "Exhibit A," and which is made a part of this bill, subject only to the trust deed to Edward Brown, hereinafter mentioned, and your petitioners beg leave to refer to the same, for the purpose of showing the character and extent of the estate claimed by your petitioners.

Your petitioners further show unto your Honors that Frank C. Taylor, Maria Louise Taylor and Josephine S. Taylor, residing in said city of Chicago, in said Cook county, are their sole surviving children, and alone interested in said trust, save the interest of your said petitioners, and a contingent interest of heirs at law, devises and legatees of said petitioner, Frank C. Taylor.

And your petitioners further represent unto your Honors that on or about the 26th day of June, A. D. 1872, your petitioners, Frank C. Taylor and Maria L. Taylor, executed and delivered to one Edward Brown, as trustee, of said city of Chicago, a certain deed of trust to secure payment of a certain note owned by the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, which said deed of trust was afterwards and on or about the 26th day of June, A. D. 1872, duly recorded in the office of the recorder of deeds of said Cook county.

render the said bonds and mortgages absolutely, to the heirs at law of said Frank C. Taylor, according to the statute of descent, and these presents are also executed upon the further trust, namely: During the joint lives of the said Frank C. and Maria Louise Taylor, the said Ira Scott, or his successors in trust, shall bargain, sell and convey the whole or a portion of said premises, or so much thereof as may then remain unsold, free and clear from all trusts hereby created, upon the joint written request of the said Frank C. and Maria Louise Taylor, which shall be expressed by the said Frank C. and Maria Louise Taylor jointing in the execution of such deed or deeds with said Ira Scott, or his successors in trust, and the avails or proceeds of such sale or sales said Ira Scott or his successors in trust, shall re-invest in unincumbered real estate in said city of Chicago or upon bond and mortgage on unincumbered real estate in said city of Chicago, in such way as the said Frank C. and Maria Louise Taylor may, by their joint instructions in writing direct, and the same shall be held upon the same trusts, and subject to the same limitations as are herein and hereby declared set forth. It is hereby further understood and agreed that said Ira Scott and his successors in trust shall be respectively allowed to deduct and retain from the rents, issues and profits received by them respectively, an amount equal to five per centum thereof, and the same shall be received by them in full payment and satisfaction of every and all charges for fees and services by said trustees respectively. And in case of the death, absence, inability or refusal to act of the said Ira Scott, then Francis B. Peabody, of said city, shall be, and he is hereby appointed and made successor in trust to said Ira Scott with like powers and authority. And said premises, or so much thereof as shall then remain unsold, or whatsoever property or assets said Ira Scott may at the time of such succession hold under and by virtue of these trusts, shall thereupon become wholly vested in such successor in trust, for the uses and purposes aforesaid.

"In witness whereof said parties of the first part have hereunto set their hands and seals, the day and year first above written.

"MARIA LOUISE TAYLOR. [SEAL.]

"FRANK C. TAYLOR. [SEAL.]"

petitioners decreed and established according to the prayer of said petition, and they be forever barred from disputing the same.

And it further appearing to said court that said notice was published for four weeks successively, in said newspaper, and that the first insertion therein was on the first day of February, A. D. 1873, being more than thirty days prior to said term of court; and it further appearing to said court that no person, other than those named as defendants in said petition, has appeared in said cause, or filed any answer or demurrer to said petition.

And it further appearing to said court that no plea, answer or demurrer was filed in said cause by said defendants, Ira Scott, Francis B. Peabody, Edward Brown and the Franklin Savings Bank, and that their default was duly entered, and that an order that said petition be taken as confessed against them.

And it further appearing to said court that said cause was duly referred to Benjamin D. Magruder, one of the masters in chancery of said court, to take proof and to make report upon the issues of law and fact involved in said cause. And the said report having been duly read and filed and the court being fully instructed and advised in the premises, doth hereby determine and agree.

That on the 19th day of April, A. D. 1871, the said petitioner, Maria L. Taylor, wife of the said petitioner, Frank C. Taylor, was seized and possessed of the following described premises, namely: All that part of block sixteen (16) in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred feet north of the southwest corner of said block; running thence north on said east line one hundred and three (103) feet, to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning, the said premises being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of a subdivision of said block sixteen (16) recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, at page 51. Said premises being situated in the city of Chicago, in the county of Cook and state of Illinois. As an estate, absolute, in fee simple, that she derived the title thereto by a certain deed executed to her by Mark Skinner and Eliphalet W. Blatchford, as executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased, and that such deed was executed in pursuance of a contract bearing date August 20th, A. D. 1866, made by said Walter L. Newberry in his life time with the said Maria L. Taylor.

render the said bonds and mortgages absolutely, to the heirs at law of said Frank C. Taylor, according to the statute of descent, and these presents are also executed upon the further trust, namely: During the joint lives of the said Frank C. and Maria Louise Taylor, the said Ira Scott, or his successors in trust, shall bargain, sell and convey the whole or a portion of said premises, or so much thereof as may then remain unsold, free and clear from all trusts hereby created, upon the joint written request of the said Frank C. and Maria Louise Taylor, which shall be expressed by the said Frank C. and Maria Louise Taylor jointing in the execution of such deed or deeds with said Ira Scott, or his successors in trust, and the avails or proceeds of such sale or sales said Ira Scott or his successors in trust, shall re-invest in unincumbered real estate in said city of Chicago or upon bond and mortgage on unincumbered real estate in said city of Chicago, in such way as the said Frank C. and Maria Louise Taylor may, by their joint instructions in writing direct, and the same shall be held upon the same trusts, and subject to the same limitations as are herein and hereby declared set forth. It is hereby further understood and agreed that said Ira Scott and his successors in trust shall be respectively allowed to deduct and retain from the rents, issues and profits received by them respectively, an amount equal to five per centum thereof, and the same shall be received by them in full payment and satisfaction of every and all charges for fees and services by said trustees respectively. And in case of the death, absence, inability or refusal to act of the said Ira Scott, then Francis B. Peabody, of said city, shall be, and he is hereby appointed and made successor in trust to said Ira Scott with like powers and authority. And said premises, or so much thereof as shall then remain unsold, or whatsoever property or assets said Ira Scott may at the time of such succession hold under and by virtue of these trusts, shall thereupon become wholly vested in such successor in trust, for the uses and purposes aforesaid.

"In witness whereof said parties of the first part have hereunto set their hands and seals, the day and year first above written.

"MARIA LOUISE TAYLOR. [SEAL.]

"FRANK C. TAYLOR. [SEAL.]"

petitioners decreed and established according to the prayer of said petition, and they be forever barred from disputing the same.

And it further appearing to said court that said notice was published for four weeks successively, in said newspaper, and that the first insertion therein was on the first day of February, A. D. 1873, being more than thirty days prior to said term of court; and it further appearing to said court that no person, other than those named as defendants in said petition, has appeared in said cause, or filed any answer or demurrer to said petition.

And it further appearing to said court that no plea, answer or demurrer was filed in said cause by said defendants. Ira Scott, Francis B. Peabody, Edward Brown and the Franklin Savings Bank, and that their default was duly entered, and that an order that said petition be taken as confessed against them.

And it further appearing to said court that said cause was duly referred to Benjamin D. Magruder, one of the masters in chancery of said court, to take proof and to make report upon the issues of law and fact involved in said cause. And the said report having been duly read and filed and the court being fully instructed and advised in the premises, doth hereby determine and agree.

That on the 19th day of April, A. D. 1871, the said petitioner, Maria L. Taylor, wife of the said petitioner, Frank C. Taylor, was seized and possessed of the following described premises, namely: All that part of block sixteen (16) in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred feet north of the southwest corner of said block; running thence north on said east line one hundred and three (103) feet, to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley: thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning, the said premises being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of a subdivision of said block sixteen (16) recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, at page 51. Said premises being situated in the city of Chicago, in the county of Cook and state of Illinois. As an estate, absolute, in fee simple, that she derived the title thereto by a certain deed executed to her by Mark Skinner and Eliphalet W. Blatchford, as executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased, and that such deed was executed in pursuance of a contract bearing date August 20th, A. D. 1866, made by said Walter L. Newberry in his life time with the said Maria L. Taylor.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 2a," answer to petition, filed March 6, 1873, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the March T., A. D. 1873.

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Frank C. Taylor, Jr., Francis B. Peabody, Maria Louise Taylor, Edward Brown, The Franklin Savings Bank, Josephine S. Taylor and all whom it may concern. } *Bill in Chancery.*

*The joint and several answers of Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, defendants, by their guardian ad litem, N. A. Lauer, to the bill of complaint of Frank C. Taylor and Maria L. Taylor, complainants.*

These defendants, answering by their said guardian, say that they are infants, and therefore submit their rights and interests in the matters in question in this cause to the protection of this Honorable court; without this that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain and prove, as this Honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

N. A. LAUER,
*Guardian ad litem for Frank C., Jr., Maria Louise and Josephine S. Taylor, defendants.*

On the back of this document is the following file mark:

"Filed Mar. 6, 1873.
A. JACOBSON, *Clerk.*"

It is stipulated by counsel that the decree hereinafter introduced as "Exhibit 3," contains a correct copy of a certain document attached to and made a part of the petition hereinbefore introduced as "Exhibit 2," except a certain certificate of acknowledgment, a copy of which certificate is as follows:

STATE OF ILLINOIS,
COUNTY OF COOK, } ss.
CITY OF CHICAGO.

I, Edward W. Russell, a notary public in and for said city, in said county, in the state aforesaid, do hereby certify that Frank C. Taylor and Maria L. Taylor, his wife, who are personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Maria L. Taylor, wife of the said Frank C. Taylor, having been by me examined separate and apart, and out of hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all her right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead exemption laws, so called, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, }
this 13th day of June, A. D. 1871. }

(Signed) EDWARD W. RUSSELL,

[NOTARIAL SEAL.] *Notary Public.*

execution of the deed or deeds of conveyance. It being, however, expressly provided that all moneys derived, or in any way received from, through or by any sales or loans hereinbefore provided for, shall by the said Ira Scott, his successor or successors in trust, be applied to the improvement of said premises, the payment of taxes or assessments on said premises, to the payment of the trustee's charges, or to the payment of incumbrances made on said premises for the purpose of improving the same, or such moneys shall be invested by said Ira Scott, his successor or successors in trust, in unincumbered real estate in said city of Chicago, or in bond and mortgage on unincumbered real estate in said city of Chicago, worth in cash, at least, double the amount of the loan, and all real estate so purchased and loans so made shall be held by said Ira Scott, his successor or successors in trust, subject to all the provisions and trusts herein contained, and may in turn be mortgaged, improved, leased, loaned, sold and conveyed, in the same manner as these presents direct concerning the premises hereinbefore described.

And it is hereby expressly provided that all conveyances so as aforesaid jointly made by said Ira Scott, his successor or successors in trust, and the said Frank C. Taylor and Maria L. Taylor, and all conveyances solely made by the said Ira Scott, his successor or successors in trust, in accordance with the provisions of these trusts, shall fully and absolutely vest in the respective grantees and mortgagees therein named, the premises in such respective conveyances mentioned, released and discharged from every and all the trusts herein and hereby created.

And it is further provided that none of such grantees or mortgages shall be required to see to the disposition of the purchase money, or the money borrowed under these trusts. And also upon this further trust, namely: The said Ira Scott, his successor or successors in trust, shall collect and receive all the rents, issues and profits derived from said premises, or in any way issuing out of any property held under these trusts, and the same shall dispose of as follows:

First: They shall pay all taxes and assessments that may or shall be levied or assessed on said premises, and all the costs and expenses of executing these trusts, including trustee's fees and charges, and insurance and necessary repairs, and during the joint lives of the said Frank C. Taylor and Maria L. Taylor, they shall deliver and pay to the said Maria L. Taylor upon her separate receipt therefor, all the balance and residue of said rents, issues and profits, as her own separate property, which receipts shall be a full and complete discharge to such trustees for all moneys so paid.

Second: In the event of the death of the said Frank C. Taylor,

public records of said Cook county which showed the title and related to the lands and premises above mentioned were totally destroyed by fire.

And your petitioners further show that they, as well as the other parties in interest under said trust, are exposed to loss or inconvenience by reason of the destruction of said deed of trust and the record thereof; that the terms of said trust are liable to be forgotten unless the same are established and preserved by the order of this court. Wherefore your petitioners respectfully pray that your honors will establish and confirm said deed of trust, and the title and interest of your petitioners, and of all others interested thereunder, in and to said described premises. And your petitioners pray for such other and further relief as to your honors shall seem meet and suitable to their case.

Your petitioners therefore pray that your honors grant unto your petitioners the writ of subpœna, issuing out of and under the seal of this Honorable court, to be directed to the said Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, the Franklin Savings Bank, and to all whom it may concern, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before said court, and then and there to answer the premises and further to stand to and abide by such order and decree therein, as shall be agreeable to equity and good conscience.

And your petitioners will ever pray, etc.

MARIA LOUISE TAYLOR.
FRANK C. TAYLOR.

F. S. HOWE,
*Solicitor and of Counsel for Complainants.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Frank C. Taylor, being first duly sworn, on oath, deposes and says, that he has read the foregoing petition and exhibit, and knows the contents thereof, and that the matters therein stated are true of his own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters he believes them to be true.

FRANK C. TAYLOR.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

[NOTARIAL SEAL.]

CORNELIUS VAN SCHAAK,
*Notary Public.*

That being so seized and possessed of said premises, the said Maria L. Taylor and the said Frank C. Taylor, her husband, petitioners herein, did, on the 13th day of June, A. D. 1871, execute and deliver to the said defendant, Ira Scott, a certain deed of trust, which was recorded in the recorder's office of said Cook county on the 15th day of June, A. D. 1871, in book 673, at page 1, and that the said deed of trust was substantially in the words and figures following, to-wit:

This indenture made this thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-one, between Maria L. Taylor and Frank C. Taylor, her husband, of the city of Chicago, in the county of Cook and state of Illinois, party of the first part, and Ira Scott, of the same place, party of the second part, witnesseth—that the said party of the first part, in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and in further consideration of the promises hereinafter contained, by these presents, do grant, bargain, sell, convey, release, alien and confirm unto the said party of the second part, and to his successors in trust, and assigns forever, all the following described piece or parcel of land, situated in the city of Chicago, in the county of Cook and state of Illinois, to-wit:

Lot four (4), in block sixteen, in Bushnell's addition to Chicago, according to the plat of the subdivision of block sixteen (16), Bushnell's addition to Chicago, as recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, being the same premises conveyed to said Maria L. Taylor by Mark Skinner and Eliphalet W. Blatchford, executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased, by deed dated the 19th day of April, A. D. 1871. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, dower, right of dower, courtesy, right of courtesy, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the above described premises, and every part thereof with the appurtenances. To have and to hold the same unto the said party of the second part, his successors in trust and assigns forever. In trust, nevertheless, and upon the following trusts, namely:

The said Maria L. Taylor may use, occupy and enjoy said premises, or any portion thereof, as a homestead during the joint lives of said Maria L. Taylor and Frank C. Taylor, or in the event of the death of the said Frank C. Taylor and a child or

children of them, him surviving, during the minority of the youngest of such children, it being expressly understood and hereby provided, that the buildings and improvements now standing on said premises may be removed and the whole or any portion thereof may be built upon and improved for the purpose of providing a revenue, and that during the joint lives of the said Frank C. Taylor and Maria L. Taylor they shall have the general management of said premises, acting in concurrence and with the approval of the said Ira Scott, his successor or successors in trust, and under the restrictions and limitations of all the trusts and provisions herein made.

And it is hereby further expressly understood and directed that, while said premises shall be occupied as a homestead, or when the rents, issues and profits received therefrom by the said Ira Scott, his successor or successors in trust, shall be insufficient to pay the current taxes and assessments that may be levied or assessed on said premises, the said trustees shall not be required to pay any such taxes or assessments, and shall be relieved from all responsibility of such payment.

And upon this further trust, namely: For the purpose of building upon or improving said premises or any portion thereof, during the joint lives of the said Frank C. Taylor and Maria L. Taylor, the said Ira Scott, his successor or successors in trust may, in his or their discretion, bargain, sell and convey by full and proper deed or deeds of conveyance, any portion of said premises, on such terms and in such manner as the said Frank C. Taylor and Maria L. Taylor shall, in writing, request, which request shall be expressed by the said Frank C. Taylor and Maria L. Taylor joining with such trustee in the execution of the deed or deeds of conveyance. Or if the said Frank C. Taylor and Maria L. Taylor so elect the said Ira Scott, his successor or successors in trust, may, in his or their discretion, secure any loan or loans of money, with such interest as may be consented to, upon said premises, or any portion thereof, by making, executing and delivering, jointly with the said Frank C. Taylor and Maria L. Taylor, the usual or necessary mortgage or mortgages, deed or deeds of trust, with such covenants and provisions therein contained as they may deem best.

And upon this further trust, namely: During the joint lives of the said Frank C. Taylor and Maria L. Taylor, for the purpose of changing the investment, the said Ira Scott, his successor or successors in trust, may, in his or their discretion, upon the written request of the said Frank C. Taylor and Maria L. Taylor, bargain, sell and convey, by proper deed or deeds of conveyance, the whole or any portion of said premises, which request shall be expressed by the said Frank C. Taylor and Maria L. Taylor joining in the

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 3," a decree entered in said cause, a copy of which is attached to the amended bill in this cause as "Exhibit C," which is as follows:

Frank C. Taylor, *et al.*,
*vs.*
Ira Scott, *et al.*
} *Decree.*

This cause coming on this day to be heard upon the petition filed herein, taken as confessed by the said defendants, Ira Scott, Francis B. Peabody, Edward Brown and the Franklin Savings Bank, and upon the answer of N. A. Lauer, guardian *ad litem* of said infant defendants, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, said guardian *ad litem* appearing in open court and upon the report of Benjamin D. Magruder, one of the masters in chancery in said court, which report bears date the 6th day of March, A. D. 1873, and was made in pursuance of an order of this court heretofore made in this cause, referring it to the said master to take proofs and to make report upon the issues of law and fact involved in said cause, and which report is hereby ratified and confirmed. And it appearing to said court that all of said defendants above named, except the Franklin Savings Bank, were duly and personally served with process; that the said defendant, the Franklin Savings Bank, was duly brought into court by publication as hereinafter set forth, and that said Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor were infants, and that by an order of said court, N. A. Lauer was duly appointed their guardian *ad litem*, and that said guardian duly filed his answer in said cause, neither admitting nor denying the charges in said petition, but requiring that the same should be established.

And it further appearing to said court, that due publication of notice of the filing of said petition was made by the clerk of said court, in a certain newspaper published in said county of Cook, and known as the Chicago *Legal News*, said newspaper having been duly selected and constituted the newspaper for publication of land title notices, in accordance with the statute in such cases made and provided. And that in said notice the said defendants above named, and all whom it may concern, was notified by said petitioners of the filing of said petition, and of the description of the premises therein described, and to appear at the March Term of said court and show cause against said application, or that said petition would be taken and confessed and the interest of said

leaving him surviving the said Maria L. Taylor and a child or children of them, the said Ira Scott, his successor or successors in trust, shall out of the balance and residue of said rents, issues and profits, after paying all taxes and assessments, insurance, necessary repairs, and trustee's charges as aforesaid, during the minority of the youngest of such children, or if all of said children should die before the youngest thereof shall have attained his or her majority, until then, pay to the said Maria L. Taylor the sum of three thousand dollars ($3,000) per annum, from time to time as the same shall be received; and the said Maria L. Taylor shall also during such minority, or if all of such children should die before the youngest thereof shall have attained his or her majority, until then be allowed the use of a homestead, free from any charge or rent, and from the remainder of said rents, issues and profits, if any there shall be, the said Ira Scott, his successor, or successors in trust, shall apply so much of the same as shall be necessary to the payment of such incumbrances as there may be on said premises or any portion thereof, and the residue, if any there shall be, they shall invest in bond and mortgage upon unincumbered real estate in the said city of Chicago, worth in cash not less than double the amount loaned, which loans when paid may be in like manner again loaned, and shall be held by said Ira Scott, his successor or successors in trust, subject to all the provisions of these trusts; and in case said trustee should foreclose any such mortgage security so held by him, he may, at his option, continue to hold the property so foreclosed upon, as such trustee and under these trusts, or he may sell and convert the same into cash, which he shall also hold as such trustee under these trusts, and loan again in the manner in these trusts provided for making loans.

Third: In the event of the death of the said Maria L. Taylor, leaving her surviving the said Frank C. Taylor and a child or children of them, the said Ira Scott, his successor or successors in trust, shall during the remainder of the life of the said Frank C. Taylor, under the direction of the said Frank C. Taylor, after deducting taxes, assessments, necessary repairs and trustee's charges, apply so much of the remainder of said rents, issues and profits as shall be necessary for the payment of any incumbrances which may be on said premises, or any portion thereof, and the residue, if any there shall be, they shall invest in bond and mortgage upon unincumbered real estate in said city of Chicago, worth in cash not less than double the amount so loaned, which loans when paid may be again in like manner loaned, and shall be held by the said Ira Scott, his successor or successors in trust, subject to all the provisions of these trusts, and in case said trustees should foreclose any such mortgage security so held by him, he shall, as directed

by the said Frank C. Taylor, either continue to hold the property so foreclosed upon under these trusts, or he shall sell and convert the same into cash which he shall loan as aforesaid, subject to these trusts. And upon this further trust, namely: In the event of the death of said Frank C. Taylor, leaving him surviving the said Maria L. Taylor and a child or children of them, when the youngest of said children shall have become of age, or if all of such children should die before the youngest shall have attained his or her majority, then the said Ira Scott, his successor or successors in trust, shall sell and convert into cash all the property and assets held under these trusts, and after first paying all the expenses of these trusts, and all taxes and assessments that may be levied or assessed on said trust estate, and all incumbrances made on said trust estate, under these trusts, he shall, as such trustee, and under these trusts, invest in bond and mortgage on unincumbered real estate in said city of Chicago, worth in cash at least double the amount of the loan, so much of said trust estate as shall bring an annual income of three thousand dollars ($3,000), which income such trustee shall thereafter from time to time, as the same shall be received, pay to the said Maria L. Taylor as her separate property during the remainder of her life; and the residue of such trust estate, if any there shall be, such trustee shall then transfer and pay over to the heirs at law of the said Frank C. Taylor, or their legal representatives, in equal proportions, and they shall take *per stirpes*, and not *per capita*. Or if the said Frank C. Taylor should leave a last will and testament to his devisees or legatees, and upon the death of the said Maria L. Taylor such trustee shall transfer and pay over such fund so as aforesaid invested for her benefit, to the heirs at law of the said Frank C. Taylor or their legal representatives in equal portions, and they shall take *per stirpes*, and not *per capita;* or if the said Frank C. Taylor should die leaving a last will and testament to his devisees or legatees, and upon this further trust, namely: In the event of the death of the said Frank C. Taylor, leaving him surviving the said Maria L. Taylor, but no child or children of them, the said Ira Scott, his successor or successors in trust, shall first pay all taxes and assessments and trustee's charges, and all incumbrances made on said trust estate under these trusts, and out of the remainder of said trust estate shall in his name as such trustee and under these trusts invest so much as will bring an annual income of three thousand dollars ($3,000) in bonds and mortgage on unincumbered real estate in said city of Chicago, worth in cash at least double the amount of the loan, and the said income the said trustee shall from time to time, as the same shall be received, pay and deliver to the said Maria L. Taylor during the remainder of her life, and

the residue of said trust estate, if any there shall be, the trustee shall convert into cash and transfer, assign and set over to the heirs at law of the said Frank C. Taylor, or their legal representatives, in equal portions, and they shall take *per stirpes*, and not *per capita*. Or if the said Frank C. Taylor should die leaving a last will and testament to his devisees or legatees, and upon the death of the said Maria L. Taylor the trustees shall assign, transfer and pay over such fund so as last aforesaid invested for her benefit, to the heirs at law of the said Frank C. Taylor, or their legal representatives, in equal portions, and they shall take *per stirpes*, and not *per capita*. Or if the said Frank C. Taylor should die leaving a last will and testament to his devisees or legatees, and upon this further trust, namely: In the event of the death of the said Maria L. Taylor, leaving her surviving the said Frank C. Taylor and a child or children of them, the said Ira Scott, his successor or successors in trust, shall hold said trust estate under these trusts during the joint lives of the said Frank C. Taylor and any of said children, or if all of said children should thereafter die, leaving the said Frank C. Taylor them surviving, until such time and during and until such time, the said Ira Scott, his successor or successors in trust, may, in his or their discretion, on the written request of the said Frank C. Taylor, which request shall be expressed by the said Frank C. Taylor joining in the deed or deeds of conveyance, bargain, sell and convey the whole or any portion of the said trust estate by full and proper deed or deeds of conveyance, or if the said Frank C. Taylor shall so elect, the said Ira Scott, his successor or successors in trust, may, in his or their discretion, secure any loan or loans of money upon said premises or any portion thereof by making, executing and delivering jointly with the said Frank C. Taylor, the usual or necessary mortgage or mortgages, deed or deeds of trust, with such covenants and provisions therein contained, as they may deem best.

It being, however, expressly provided that all moneys derived or in any way received from, through or by any such sales or loans last above mentioned, shall by the said Ira Scott, his successor or successors in trust, be received and applied to the improvement of said trust estate, or the payment of taxes on said trust estate, or the payment and satisfaction of any incumbrances made on said trust estate, for the purpose of improving the same, or such moneys shall be re-invested by the said Ira Scott, his successor or successors in trust, in unincumbered real estate in the said city of Chicago, or in bond and mortgage on unincumbered real estate in said city of Chicago, worth at least double the amount of the loan, and all real estate so purchased, and all loans so made, shall be held by the said Ira Scott, his successor or

successors in trust, subject to all the trusts herein contained, and may in turn be mortgaged, improved, leased, sold and conveyed and loaned on bond and mortgage, in the same manner as these presents direct concerning the premises hereinbefore described, and upon this further trust, namely: In the event of the death of the said Maria L. Taylor, leaving her surviving the said Frank C. Taylor, but no child or children of them, or in the event of the death of all such children subsequent to the death of the said Maria L. Taylor, leaving the said Frank C. Taylor them surviving, the said Ira Scott, his successor or successors in trust, shall at once assign and convey by full and proper deed or deeds of conveyance, instrument or instruments in writing, all of the said trust estate to the said Frank C. Taylor absolutely and wholly relieved and discharged of and from all the trusts hereby created.

And it is hereby further expressly provided that in respect to the trust fund to be invested for the purpose of bringing an income of three thousand dollars ($3,000) for the benefit of said Maria L. Taylor, the said Ira Scott, his successor or successors in trust, shall have full power and authority to manage the same by foreclosure, sale, reinvestment or otherwise, so that said trust fund may continue to be invested for her benefit in bond and mortgage during her life, under and in accordance with the trust relating thereto, and for the uses and purposes thereof, and that after the death of the said Frank C. Taylor, the said Ira Scott, his successor or successors in trust, shall have full power and authority to manage said trust estate in his or their discretion by foreclosure, sale, reinvestment or otherwise, so that the same shall continue to be invested and held under and in accordance with the provisions of these trusts and for the uses and purposes thereof.

And it is further expressly provided and declared that after the death of the said Frank C. Taylor, all deeds of conveyance, mortgages, deeds of trust and instruments of writing necessary to be made in the fulfillment of these trusts by the said Ira Scott, his successor or successors in trust, can be executed and acknowledged by such trustee solely as such trustee, and that all deeds of conveyance, mortgages and deeds of trust, and instruments of writing so solely executed and acknowledged shall operate to convey the premises in the same described fully relieved and discharged from these trusts.

It is hereby further expressly provided that in case of the death, inability or refusal to act, or removal from the state of said Ira Scott, then Francis B. Peabody, of said city of Chicago, shall become, and he is hereby appointed and made his successor in trust under these presents, and that thereupon all the title to the trust estate hereinbefore described and mentioned, not therefore conveyed by the said Ira Scott in accordance with these trusts, shall at once

become fully vested in the said Francis B. Peabody, as successor in trust, and he shall become vested with all the powers herein and hereby granted to, and subject to all the limitations herein and hereby imposed upon the said Ira Scott, for the uses and purposes aforesaid, and in case of the death, inability or refusal to act, or the removal from the state of the said Francis B. Peabody, then upon application by one or more of the *cestui qui* trusts be made to any court of record of Cook county, such court may appoint a successor in trust under these presents, and thereupon the person so appointed a successor in trust shall become vested with all the powers herein and hereby conferred on, and subject to all the limitations hereby imposed on said Ira Scott, his successor or successors in trust; and all the trust estate held by his predecessors under these presents, shall at once become fully vested in him as successor in trust under these presents, for the uses and purposes aforesaid.

And it is hereby further provided that said Ira Scott, his successor or successors in trust, shall be entitled to receive five (5) per centum of the amount of all the rents, interest and income collected by them, in full payment and satisfaction of all their fees and charges and commissions for accepting and performing these trusts, and said Maria L. Taylor for her heirs, executors and administrators does hereby covenant, promise and agree to and with the party of the second part, his successor in trust, and assigns, that at the time of the unsealing and delivery of these presents, she is well seized of the premises above conveyed as of a good, sure perfect, absolute and indefeasible estate of inheritance in law in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, tax sales and incumbrance of what kind and nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his successor in trust, and assigns against all and every other person or persons lawfully claiming, or to claim, the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

And the party of the first part for the consideration above mentioned, do hereby expressly waive and release all right and benefit which they have in and to said premises, or to which they may be entitled under and by virtue of any and all laws of the state of Illinois relating to the exemption of homesteads from sale on execution.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

(Signed) FRANK C. TAYLOR, [SEAL.]

MARIA L. TAYLOR. [SEAL.]

And it further appearing to the court that said Frank C. Taylor, Jr., Maria L. Taylor and Josephine Taylor are the sole surviving children of said petitioners, and alone interested in said trusts, save the interest of said petitioners, and the contingent interest of the heirs at law devisees and legatees of said petitioner, Frank C. Taylor, that on the 8th and 9th of October, A. D. 1871, the said deed of trust, deed from said executors and trustees, and said contract and records thereof in the recorder's office of Cook county, Illinois, were destroyed by fire; that said petitioners are now, and were at the date of said fire in the sole and undisputed possession of said premises under said Ira Scott as trustee; that the same were occupied by said petitioners as a homestead at the time of said fire, under said trust to said Ira Scott; that the said Maria L. Taylor has had possession thereof since August 20, A. D. 1866, and paid all taxes assessed thereon since that date; that no other persons except those named in said petition are in possession of said premises, or own or claim any estate therein or in any part thereof, that no other conveyances thereof have been made or recorded since the destruction of said records, save and except a certain trust deed dated June 26, A. D. 1872, executed by said petitioners to defend Edward Brown, to secure the payment of a note owned by the Franklin Savings Bank, of Pawtucket, defendant.

And the said court being fully advised in the premises doth hereby determine, adjudge and decree that the said defendant Ira Scott is seized and possessed of said premises in said petition and trust deed described as of an estate absolute, in fee simple, upon the trusts, and subject to the conditions contained in said deed of trust above set forth, executed by the said petitioners to the said defendant Ira Scott, and that the said Francis B. Peabody is his successor in trust as provided in said deed.

And the said court doth further find that the said petitioners and the said defendants Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor are alone interested in said trusts and in said premises, and that their respective interests therein are defined and established by said deed of trust to said Ira Scott, and that they hold the same under and in accordance with the terms and provisions of said deed of trust to said Ira Scott.

And the court further orders that the rights and interests of the said defendants, Edward Brown and the Franklin Savings Bank shall not be in any wise affected by this decree, and does not pass thereon.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 3a," decree in *Taylor, et al.*, vs. *Taylor, et al.*, 42,146, entered March 4, 1879, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

February Term, A. D. 1879.

IN CHANCERY.

Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor.

*vs.*

Frank C. Taylor, Maria L. Taylor, Ira Scott, Francis B. Peabody, Edward Brown, The Franklin Savings Bank, Edward Russell, Alexander Taylor and Robert Taylor. } *Bill of Review.*

This cause coming on this day to be heard upon the bill of complaint filed herein, taken as confessed by the said defendants, Frank C. Taylor and Maria L. Taylor, and upon the answers of Alexander Taylor and Robert C. Taylor by their guardian *ad litem* William Coffeen, said guardian *ad litem* appearing in open court, and the joint and several answers of Ira Scott, Francis B. Peabody and Edward W. Russell, and the answer of Edward Brown, and the answer of the Franklin Savings Bank, and the several replications thereto.

And it appearing to said court that said defendants Frank C. Taylor and Maria L. Taylor and Ira Scott and Francis B. Peabody and Edward W. Russell and Alexander Taylor and Robert Taylor, were duly and personally served with process in said cause, and that said defendants the Franklin Savings Bank entered its appearance in said cause by Grant & Swift, its solicitors, and that said Edward Brown entered his appearance in said cause, and that said Scott, Peabody, Russell, the Franklin Savings Bank and Brown severally filed answers to the bill of complaint in said cause, and that Alexander Taylor and Robert C. Taylor were infants, and that by an order of said court William Coffeen was duly appointed their guardian *ad litem*, and that said guardian *ad litem* duly filed his answer in said cause, neither admitting nor denying the charges in said petition or bill of complaint, but requiring that the same should be proved—and it further appearing to said court that no plea, answer or demurrer was filed in said cause by said defendants Frank C. Taylor and Maria L. Taylor, and that their default was entered in said cause, that said bill of complaint be duly taken as confessed against them, and the court having heard and considered the evidence offered on the trial of said cause by the complainants and the defendants, and being fully instructed and advised in the premises, doth hereby find, determine and decree:

That on the 30th day January, A. D. 1873, Frank C. Taylor and Maria L. Taylor filed in this court a certain bill of complaint entitled to the March Term thereof, A. D. 1873, against Frank C. Taylor, Jr., Josephine S. Taylor, Maria Louise Taylor, Ira Scott, Francis B. Peabody and Edward Brown, the Franklin Savings Bank and all whom it might concern, a copy of which bill of complaint is annexed to the bill of complaint and review in this cause, and marked "Exhibit No. 1."

That on the 29th day of March, A. D. 1873, a decree was passed and entered in said cause by this court.

The said decree is on the records of this court, duly entered and enrolled, and that a copy of the same is annexed to the bill of complaint and review in this cause, marked "Exhibit No. 2."

That since the entry and enrolling of said decree above described, it has been discovered that the deed of trust referred to in the bill of complaint filed in said cause, as made by Maria L. Taylor and Frank C. Taylor to Ira Scott as trustee, on the 13th day of June, A. D. 1871, was not destroyed by fire on October 8 or 9, 1871, or at any time, and the said deed of trust has been discovered, and that a copy of said deed of trust is set forth in "Exhibit No. 3" to the bill of complaint and review filed in this cause.

That said deed of trust has come into the possession of the complainants in the bill of complaint and review in this cause, Frank

C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, who have produced the same.

That it is newly discovered evidence, not possible for these complainants to have produced on the hearing of said original bill of complaint above referred to.

That the decree above described, entered and enrolled in the original cause, on the 29th day of March, A. D. 1873, which is described in the bill of complaint and review in this cause, and a copy of which is annexed to said bill, and marked "Exhibit No. 2," is erroneous and ought to be reviewed, reversed and set aside.

And therefore it is now and herein and hereby determined, adjudged and decreed by the court that the said decree above referred to is reviewed, reversed and set aside, and the bill in said original cause filed on the 30th day of January, A. D. 1873, by Frank C. Taylor and Maria L. Taylor against Frank C. Taylor, Jr., Josephine S. Taylor, Maria Louise Taylor, Ira Scott, Francis B. Peabody, Edward Brown and the Franklin Savings Bank, is hereby dismissed.

But nothing herein ordered or decreed shall deprive said Franklin Savings Bank or said Francis S. Howe, as trustee or said Edward W. Russell as successor in trust, of any interests they or either of them may have in the real estate described in the original bill of complaint herein—the claims of said bank and said Howe and Russell not having been heard or adjudicated.

On the back of the above document are the following:

"Decree. *Taylor, et al.*, vs. *Taylor, et al.*, 42,146.

"Enter Moore, March 4, 1879. Entered Hoffman."

By Mr. KENDALL: I offer in evidence as complainants' "Exhibit 4," bill filed in the case of *Frank C. Taylor, et al.*, vs. *Ira Scott, et als.*, on July 23, 1873. Case No. 44,331. It is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the August Term, A. D., 1873.

TO THE HONORABLE, THE JUDGES OF THE SAID SUPERIOR COURT OF COOK COUNTY, IN CHANCERY SITTING:

Humbly complaining show unto your Honors your orators, Frank C. Taylor and Maria L. Taylor, of the city of Chicago, in the county of Cook and state of Illinois, that heretofore, to-wit: On the 13th day of June, A. D. 1871, your oratrix, Maria L. Taylor, who is the wife of the said Frank C. Taylor, being seized and possessed in fee simple of the following described premises, namely: All that part of block sixteen (16) in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning, said premises being the same as lot four (4) in block sixteen (16) in Bushnell's addition to Chicago, according to the plat of subdivision of block sixteen (16), Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, did, with her said husband make, execute, acknowledge and deliver to Ira Scott, of the city of Chicago, in the said county and state, and his successor and successors in trust, a certain deed of conveyance of the said premises hereinbefore described, which said deed was afterwards, on the 15th day of June, A. D. 1871, recorded in the office of the recorder of deeds of said Cook county, in book 673, at page 1, a copy of which deed is hereto attached, and marked "Exhibit A," which exhibit is hereby made a part of this bill, and to which your orators beg leave to refer.

And your orators further show unto your Honors, that in and by said deed to said Ira Scott, the said premises were conveyed to said Scott, and his successors in trust, to be held and managed by him and them, in trust for the benefit of your orators, their children and the devisees and legatees of the said Frank C. Taylor. And your orators further show, that by the terms and provisions of the said trust conveyance, among other things, the said Scott, and his successors in trust, were authorized and empowered to build upon and im-

prove said premises, or any part of the same, for the purpose of deriving a revenue therefrom, and to borrow money for the purpose of making such improvements, and to secure the payment of the same, by executing on said premises, or any portion thereof, mortgages or trust deeds, and also to sell a portion of said premises for the purpose of raising funds to improve the said trust estate; the full nature and extent of said trusts will more fully appear by reference to said "Exhibit A."

And your orators further show that from the date of said trust conveyance, during and until the great fire of October 8 and 9, A. D. 1871, your said oratrix occupied the said premises as a homestead, under said trust conveyance, the improvements on said premises at that time consisting of the residence and outbuildings of your said orators. Your orators further show, that by said fire, all of the improvements on said premises were destroyed; and your oratrix and her said husband and family were left without a home, and suffering large pecuniary losses by the fire in other ways; that by the same fire the said trust conveyance, and all the public records showing the nature of said trusts, were all destroyed, and that no copy of said trust conveyance was preserved.

Your orators further show unto your Honors that your oratrix and her said husband were to such an extent losers by the said fire, that they could not suitably provide for their necessary wants, and those of their children, and pay the taxes and assessments laid on said premises, without in some way making the said trust estate available as a source of revenue.

And your orators further show that said premises were situated in a portion of said city that had been, and continued to be valuable for residence purposes, and that the best judgment of your orators demanded that said premises should be improved by the erection thereon of a block of five first-class residences, but the said trust conveyance, and all the records and copies thereof, having as aforesaid been destroyed, the said Scott, acting as such trustee, when requested by your orators, declined either to sell any portion of said premises to borrow the necessary funds for said improvements, or to execute a mortgage to secure any such loan, until said trust should be fully restored by the decree of some court having competent jurisdiction of such matters, which could not have been had without great delay, which would have operated greatly to the prejudice and damage of said trust estate.

Your orators further show unto your Honors that the abstracts, minutes, copies and extracts of and concerning the said trust conveyance, which were preserved from said fire, were and are very meager, and only show the trust conveyance by giving the names of your orators as grantors and the said Ira Scott as grantee, the description of the property thereby conveyed, the date of the conveyance, the date, book and page of the record thereof, and further only describing the conveyance as a deed of trust, there being no reference whatever to the terms and conditions of such trust conveyance.

And your orators further show unto your Honors, that such was the condition of the records and abstracts showing the title to said trust estate, that it was an utter impossibility for the said Scott, as such trustee, either to sell and convey the same, or any portion thereof. or to borrow money upon the same as security.

In order, therefore, to protect and preserve said trust estate, said Frank C. Taylor, as the agent of the said Maria L. Taylor, and at her request, borrowed a large sum of money, and with the same erected on said premises, for the benefit of said trust estate, a block of five fine marble front residences, one of which your oratrix now occupies with her said family, as a homestead, under said trust conveyance. And your orators state that the said improvements are a wise and judicious improvement of said trust estate.

And your orators further show unto your Honors, that they have, as aforesaid, paid. laid out and expended on said premises, for the benefit of said trust estate, about the sum of $53,700, for which they hold, on account of said trust estate, the usual and proper vouchers.

And your orators further show that on the 1st day of July, A. D. 1873, your orators and the said Scott, acting as such trustee, caused to be made, and on the 5th day of July, A. D. 1873, recorded in the recorder's office of said county, in book 5 of maps, on page 24, a plat of a subdivision of said premises.

And your orators further show that they deem it advisable and necessary to sell one or more of said houses, and the lots on which they stand, and from the funds so derived, to pay the whole or any portion of said expenses of said improvements.

And your orators further show unto your Honors, that on the 3rd day of March, A. D. 1873, a decree of this Honorable court was entered on the chancery side thereof, restoring the title to said trust estate, and establishing said trust conveyance to have been, and to be the same as "Exhibit A." that said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor are all the children of your said orators, and that in and by said deed of trust it is also provided that in the event of the death, inability or refusal to act, or removal from the state of said Ira Scott, then Francis B. Peabody, of said city of Chicago, shall become his successor in trust under said deed, and that thereupon all the title to the said trust estate not theretofore conveyed by the said Ira Scott, shall at once become vested in the said Peabody, as the successor in trust, under said trust conveyance; and further, that in the case of the death, inability or refusal to act, or removal from the state of the said Francis B. Peabody, then upon application by one or more of the *cestuis qui trusts* being made to any court of record of said Cook county, such court may appoint a successor in trust, under said trust deed, and thereupon the person so appointed a successor in trust shall become vested with all the powers therein and thereby conferred on, and subject to all the limitations thereby imposed on said Ira Scott, his successor or successors in trust, and all the trust estate held by his predecessor under said trust deed shall at once become fully vested in him as suc-

cessor in trust, under said trust deed, and thereupon the person so appointed a successor in trust shall become vested with all the powers therein and thereby conferred on, and subject to all the limitations thereby imposed on said Ira Scott, his successor or successors in trust, and all the trust estate held by his predecessor under said trust deed shall at once become fully vested in him as successor in trust, under said trust deed, for the uses and purposes therein expressed, as by a reference to said "Exhibit A," will fully appear.

And your orators further show unto your Honors that the said Ira Scott has resigned the said trusteeship, and all the trusts imposed upon him by said deed of trust, and desires to be fully relieved and discharged from the same.

And your orators further show that said Francis B. Peabody has also resigned the said trusteeship, and all the trusts imposed upon him by said deed of trust, as successor to said Ira Scott.

Wherefore your orators pray that this Honorable court will, in accordance with the provisiors of said deed of trust by a proper decree entered herein, appoint some competent and trustworthy person as a successor in trust to said Ira Scott and Francis B. Peabody under said deed of trust; and that this Honorable court may further adjudge, order and decree that all the premises mentioned in said deed of trust to Ira Scott, except such portions thereof as may have been heretofore sold and conveyed by the said Ira Scott and said Peabody, or either of them, and all the said trust estate held by said Ira Scott, under said trust deed, shall at once by virtue of such appointment become fully vested in the person so appointed by the order of this Honorable court as a successor in trust to the said Ira Scott and Francis B. Peabody in accordance with the said deed of trust, for the uses and purposes as therein expressed, and that the person so appointed successor in trust shall become vested with all the powers in said deed of trust conferred, and subject to all the limitations thereby imposed on the said Ira Scott, his successor or successors in trust.

And your orators further pray that the said court shall ascertain and determine by a full and proper accounting the value and cost of said improvements so as aforesaid made upon said premises, and the person or persons to whom the said trust estate is indebted for the same, and that the said successor in trust, or his successor, may be authorized, out of any funds arising from the sale of said premises, or any part thereof, or from any loan made for that purpose, to pay and discharge all such claims, not to exceed the fair value and cost of said improvements as found by this Honorable court; and that your orators may have such further or other relief in the premises as the nature of their case may require and as shall be agreeable to equity.

May it please your Honors to grant unto your orators a writ of subpœna, to be directed to the said Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, thereby commanding them, and each of them, to be and appear at a certain time and under a certain penalty therein to be stated before this Honorable court, and then and there full, true,

direct and perfect answers make (but not under oath, the necessity of the oath to such answers being hereby waived), to all and singular the premises, and further to stand to, abide and perform such order or decree herein as to your Honors shall seem meet, and your orators will ever pray, etc.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

HOWE & RUSSEL,
*Complainant's solicitors.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Frank C. Taylor, being first duly sworn, on oath deposes and says that he is one of the complainants in the foregoing bill of complaint by him subscribed; that he has heard the same read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon information and belief, and as to those matters he believes them to be true.

FRANK C. TAYLOR.

Subscribed and sworn to before me, }
this 23d day of July, A. D. 1873. }

LUCIUS HOYT,
[NOTARIAL SEAL] *Notary Public.*

By MR. KENDALL: I also offer in evidence as complainants' "Exhibit 5," the decree entered in said last entitled cause, a copy of which is attached to the said amended bill.

Frank C. Taylor and Maria L. Taylor,
*Complainants.*
vs.
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, and Alexander Taylor. } *Decree.*

This cause coming on this day to be heard upon the bill of complaint filed herein, taken as confessed by the said defendants Ira Scott and Francis B. Peabody, and upon the answer of N. A. Lauer, guardian *ad litem* of said infant defendants, Frank C. Taylor, Jr.,

Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, said guardian *ad litem* appearing in open court, and upon the report of Benjamin D. Magruder, one of the masters in chancery of said court, which bears date the 14th day of August, A. D. 1873, and was made in pursuance of an order of this court heretofore made in this cause, referring it to said master to take proofs, and to make a report upon the issues of law and fact involved in said cause, and which report is hereby ratified and confirmed, and it appearing to said court that said defendants Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor were duly and personally served with process in said cause, and that said defendant, Francis B. Peabody has entered his appearance in said cause by his solicitor, Rufus C. Hall, Esq., and that said defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, were infants, and that by an order of said court, N. A. Lauer was duly appointed their guardian *ad litem*; and that said guardian *ad litem* duly filed his answer in said cause, neither admitting nor denying any of the charges in said petition or bill of complaint, but requiring that the same should be established; and it further appearing to said court that no plea, answer or demurrer was filed in said cause by said defendants, Ira Scott and Francis B. Peabody, and that their default was duly entered, and that an order was entered in said cause that said bill of complaint be duly taken as confessed against them; and it further appearing to said court that said cause was duly referred to Benjamin D. Magruder, one of the masters in chancery of said court, to take proof and to make report upon the issues of law and fact involved in said cause, and said report having been duly read and filed, and the court being fully advised and instructed in the premises, doth hereby determine and decree, that Maria L. Taylor, the wife of her co-complainant, Frank C. Taylor, was, on the 13th day of June, A. D. 1871, seized and possessed in fee simple absolute of the following described premises, situate in the city of Chicago, in the county of Cook and state of Illinois, namely: all that part of block sixteen (16), in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty feet to the place of beginning; said premises being the same as lot four (4) in block sixteen (16) Bushnell's addition to Chicago, according to the plat of subdivision of block sixteen (16), Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county in book 165 of maps, on page 51, and that the said Maria L. Taylor, being so seized and possessed of said premises, did with her husband Frank C. Taylor on said 13th day of June, A. D. 1871, make, execute, acknowledge and deliver to Ira Scott, one of said defendants of said city of Chicago, and his successor and succes-

direct and perfect answers make (but not under oath, the necessity of the oath to such answers being hereby waived), to all and singular the premises, and further to stand to, abide and perform such order or decree herein as to your Honors shall seem meet, and your orators will ever pray, etc.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

HOWE & RUSSEL,
*Complainant's solicitors.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Frank C. Taylor, being first duly sworn, on oath deposes and says that he is one of the complainants in the foregoing bill of complaint by him subscribed; that he has heard the same read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon information and belief, and as to those matters he believes them to be true.

FRANK C. TAYLOR.

Subscribed and sworn to before me, }
this 23d day of July, A. D. 1873. }

LUCIUS HOYT,
[NOTARIAL SEAL] *Notary Public.*

By MR. KENDALL: I also offer in evidence as complainants' "Exhibit 5," the decree entered in said last entitled cause, a copy of which is attached to the said amended bill.

Frank C. Taylor and Maria L. Taylor,
*Complainants.*
vs.
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, and Alexander Taylor.
} *Decree.*

This cause coming on this day to be heard upon the bill of complaint filed herein, taken as confessed by the said defendants Ira Scott and Francis B. Peabody, and upon the answer of N. A. Lauer, guardian *ad litem* of said infant defendants, Frank C. Taylor, Jr.,

Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, said guardian *ad litem* appearing in open court, and upon the report of Benjamin D. Magruder, one of the masters in chancery of said court, which bears date the 14th day of August, A. D. 1873, and was made in pursuance of an order of this court heretofore made in this cause, referring it to said master to take proofs, and to make a report upon the issues of law and fact involved in said cause, and which report is hereby ratified and confirmed, and it appearing to said court that said defendants Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor were duly and personally served with process in said cause, and that said defendant, Francis B. Peabody has entered his appearance in said cause by his solicitor, Rufus C. Hall, Esq., and that said defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, were infants, and that by an order of said court, N. A. Lauer was duly appointed their guardian *ad litem*; and that said guardian *ad litem* duly filed his answer in said cause, neither admitting nor denying any of the charges in said petition or bill of complaint, but requiring that the same should be established; and it further appearing to said court that no plea, answer or demurrer was filed in said cause by said defendants, Ira Scott and Francis B. Peabody, and that their default was duly entered, and that an order was entered in said cause that said bill of complaint be duly taken as confessed against them; and it further appearing to said court that said cause was duly referred to Benjamin D. Magruder, one of the masters in chancery of said court, to take proof and to make report upon the issues of law and fact involved in said cause, and said report having been duly read and filed, and the court being fully advised and instructed in the premises, doth hereby determine and decree, that Maria L. Taylor, the wife of her co-complainant, Frank C. Taylor, was, on the 13th day of June, A. D. 1871, seized and possessed in fee simple absolute of the following described premises, situate in the city of Chicago, in the county of Cook and state of Illinois, namely: all that part of block sixteen (16), in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty feet to the place of beginning; said premises being the same as lot four (4) in block sixteen (16) Bushnell's addition to Chicago, according to the plat of subdivision of block sixteen (16), Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county in book 165 of maps, on page 51, and that the said Maria L. Taylor, being so seized and possessed of said premises, did with her husband Frank C. Taylor on said 13th day of June, A. D. 1871, make, execute, acknowledge and deliver to Ira Scott, one of said defendants of said city of Chicago, and his successor and succes-

sors in trust, a certain deed of conveyance of said premises hereinbefore described, which said deed was afterwards on the 15th day of June, A. D. 1871, recorded in the office of the recorder of deeds of said Cook county in book 673, at page 1. That "Exhibit A." which is attached to the bill of complaint in this cause, is a correct copy of said deed so made to Ira Scott; that on the 3d day of March, A. D. 1873, a decree of this court was entered on the chancery side thereof restoring the title to said trust estate, and establishing and confirming said trust conveyance to have been and to be the same as said "Exhibit A:" that in and by said deed to said Ira Scott the said premises were conveyed to said Scott and his successors in trust, to be held and managed by him and them in trust for the benefit of said Frank C. Taylor, Maria Louise Taylor, their children and the devisees and legatees of the said Frank C. Taylor; that by the terms and provisions of said trust conveyance, among other things, the said Scott and his successors in trust were authorized and empowered to build upon and improve said premises, or any part of the same, for the purpose of deriving revenue therefrom, and to borrow money for the purpose of making said improvements, and to secure the payment of the same by executing on said premises, or any portion thereof, mortgages or trust deeds, and also to sell a portion of said premises for the purpose of raising funds to improve the said trust estate; that from the date of said trust conveyance during and until the great fire of October 8 and 9, the said Maria L. Taylor occupied the said premises as a homestead under said trust conveyance in accordance with the terms thereof; that during that time the entire improvements of said premises consisted of the residence and out-buildings attached thereto of the said Maria L. Taylor; that by said fire all of the improvements on said premises were destroyed, and that the said Frank C. Taylor and Maria L. Taylor and their children were thereby left without a home; that the said Frank C. Taylor and Maria L. Taylor were also in other ways great losers by said fire, to such an extent that they could not suitably provide for their necessary wants and those of their children, and pay the taxes and assessments laid and assessed on said premises without in some way making the said trust estate available as a source of revenue; that said premises were situated in a portion of said city of Chicago that had been and continued to be valuable for residence purposes, and that good, careful and judicious management of said trust estate for the best interests of all concerned therein required that said premises should be improved by the erection thereon of a block of five first-class residences; that by the said fire the said trust conveyance and all the public records of the same were totally destroyed, and that no copy of said trust conveyance was preserved; that the abstract, minutes, copies and extracts of and concerning the said trust conveyances, which were preserved from the said fire, are and were very meager, and only show the trust conveyance by giving the names of said Frank C. Taylor and Maria L. Taylor as grantors, and said Ira Scott as grantee, the description of the

property thereby conveyed, the date of the conveyance, the date, book and page of the record thereof—and only describing the conveyance as a deed of trust, there being no reference whatever to the terms of the trust—that such was the condition of the public records, and the abstracts showing the title to such trust estate that it was impossible for the said Ira Scott, as such trustee, either to sell and convey the same, or any portion thereof, or to borrow money upon the same as security; that the said Ira Scott when applied to by said complainants refused by reason of said inability to sell any portion of said premises, or to borrow the funds that would be necessary for the said improvements, or to execute any mortgage to secure any such loan until said trust should be restored by the decree of some court having competent jurisdiction of such matters, which at that time could not have been had without great delay, and that such delay would have operated greatly to the prejudice and damage of said trust estate; that to protect and preserve said trust estate, and acting for the best interests of all concerned, the said Frank C. Taylor, as agent of said Maria L. Taylor, and at her request, borrowed a large sum of money, and with the same erected on said premises for the benefit of said trust estate, a block of five marble-front residences, one of which is now occupied by said Maria L. Taylor and her family as a homestead under said trust deed, that the said improvements on said premises are a wise and judicious improvement of said trust estate; that said improvements were commenced in the month of August, A. D. 1872, and completed in the spring of 1873; that the said Maria L. Taylor, through her said husband as her agent, has paid, laid out and expended in said improvements of said trust estate, on the erection and completion of said block of residences, the sum of fifty-three thousand and seven hundred dollars ($53,700); that said sum of money was judiciously and wisely expended on said premises, and that the fair value of said improvements is the said sum of fifty-three thousand and seven hundred dollars. That it is advisable and necessary for the best interests of said trust estate to sell and convey one or more of said houses so erected on said premises, and to borrow enough money otherwise upon said trust estate to pay for said improvements the said sum of fifty-three thousand and seven hundred dollars ($53,700). And the court doth further find and decree that Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor are all the children of the said Frank C. Taylor and Maria L. Taylor, that on the first day of July, A. D. 1873, the said Frank C. Taylor, Maria L. Taylor and Ira Scott, acting as such trustee, made and on the fifth day of July, A. D. 1873, recorded in the office of the recorder of said Cook county, in book 5 of maps, on page 24, a plat of a subdivision of said premises; that in and by said deed of trust it is, among other things, also provided that in the event of the death, inability or refusal to act or removal from the state of the said Ira Scott, defendant herein, then Francis B. Peabody, one of the defendants herein, of said city of Chicago, should become his successor in trust under said deed, and that thereupon all

the title to said trust estate not heretofore conveyed by the said Ira Scott, should at once become vested in the said Peabody, as the successor in trust under said deed, and that thereupon all the title to said trust estate *not* theretofore conveyed by the said Ira Scott should at once become vested in the said Peabody as the successor in trust under said trust conveyance; and further that in case of the death, inability or refusal to act of the said Francis B. Peabody, then upon application of one or more of the *cestui qui* trusts being made in any court of record of said Cook county, such court might appoint a successor in trust under said deed, and that thereupon the person so appointed a successor in trust should become vested with all the powers therein and thereby conferred on and subject to all the limitations thereby imposed on said Ira Scott, his successor or successors in trust, and that all the trust estate held by his predecessor under said trust deed should at once become fully vested in him as successor in trust under said trust deed for the purpose therein expressed; that on the 21st day of July, A. D. 1873, said Ira Scott fully resigned the trust imposed upon him by said trust conveyance, and that thereupon and on the same day the said Francis B. Peabody also resigned absolutely the trust imposed upon him by said trust conveyance and the said resignation of said Ira Scott. And the court doth hereby further determine and decree that said Ira Scott has never received any money or proceeds from said trust estate, and that he has never made any disbursements on account thereof. That Charles H. Mulliken, of the said city of Chicago, is a competent and trustworthy person and a fit and proper person to be appointed by the court a successor in trust to said Ira Scott and Francis B. Peabody under said trust conveyance and in accordance with the terms thereof and for the uses and purposes therein expressed. The court doth hereby order, adjudge and decree that said Charles H. Mulliken, of the city of Chicago, in the county of Cook and state of Illinois, be and he is hereby appointed and made a successor in trust to said Ira Scott and Francis B. Peabody under said trust conveyance to said Ira Scott. And it is hereby further ordered, adjudged and decreed that hereby and by virtue of said appointment there shall and does become fully vested in Charles H. Mulliken aforesaid, as a successor in trust under said trust conveyance for the uses and purposes therein expressed, all of said premises and trust estate, namely: all that part of block sixteen (16) in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on the east line one hundred and three (103) feet, to the southwest corner of said block; thence east on the south line of Maple street one hundred *and fifty (150)* to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning; said premises being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of subdivision of block 16, Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said

Cook county, in book 165 of maps, on page 51, together with all the buildings and improvements thereon, and all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatever, as well in law as in equity of the said Ira Scott and Francis B. Peabody as such trustees under said trust conveyance in or to the aforesaid described premises, and every part and parcel thereof with the appurtenances, to have and to hold the same unto the said Charles H. Mulliken as such successor in trust and to his successor, successors in trust and assigns forever. And it is herein and hereby further ordered, adjudged and decreed that the said Charles H. Mulliken, as such successor in trust, shall and does hereby become fully vested with all the powers in and by said trust conveyance conferred on, and subject to all the limitations therein and thereby imposed on said Ira Scott, as such trustee, his successor and successors in trust. And it is hereby further ordered, adjudged and decreed that the said Charles H. Mulliken, as such trustee, be, and he is hereby authorized and empowered out of any funds arising from the sale of said premises, or any part thereof, or from any loan made for that purpose to pay and discharge to the said Frank C. Taylor and Maria L. Taylor all the costs of said improvements as aforesaid advanced and paid by them, or either of them, not to exceed in amount the sum of $53,700.

It is further ordered, adjudged and decreed that the said Ira Scott and Francis B. Peabody be, and they hereby are fully relieved and discharged from all the trusts imposed on them by said trust conveyance, and fully acquitted and discharged of and from any and all liability to said trust estate as such trustee, and further that they, upon request, shall execute, acknowledge and deliver to said Charles H. Mulliken as their successor in trust, his successors and assigns, a full release, quit claim and conveyance of all right, title, interest, claim or demand whatsoever they or either of them may have acquired in, through or by said trust conveyance to said premises therein described, together with all the appurtenances and privileges thereunto belonging or appertaining.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 5½," quit claim deed from Ira Scott and Francis B. Peabody to Charles H. Mulliken, trustee, etc., dated the 10th day of September, 1873, and filed for record in the recorder's office of Cook county, the 13th day of September, 1873, which is as follows:

*This indenture*, made this 10th day of September, in the year of our Lord one thousand eight hundred and seventy-three, *between Ira Scott and Francis B. Peabody*, of Cook county, Illinois, party of the first part, and *Charles H. Mulliken* of said county and state, as trustee, appointed by the Superior court of Cook county, and named in the decree hereinafter mentioned, party of the second part.

Whereas on the 19th day of August, A. D. 1873, a decree was entered in the Superior court of Cook county, in a certain suit then pending in said court on the chancery side thereof, wherein Maria L. Taylor and Frank C. Taylor were complainants, and Ira Scott, Francis B. Peabody and others, were defendants, by which it was, among other things, ordered, adjudged and decreed that the said Ira Scott and Francis B. Peabody, upon request, execute, acknowledge and deliver to said Charles H. Mulliken, as their successor in trust, his successors and assigns, a full release and *quit-claim* and conveyance of all right, title, interest, claim or demand whatsoever they, or either of them, may have acquired in and to the premises hereinafter described, in, through or by a certain trust deed, in said decree mentioned, bearing date the 13th day of June, A. D. 1871, executed by Maria L. Taylor and her husband Frank C. Taylor to the said Ira Scott and Francis B. Peabody, and filed for record in the recorder's office of Cook county, Illinois, on the 15th day of June, A. D. 1871, and recorded in book 673 of deeds, page 1.

*Now, therefore, this indenture witnesseth*, that the said party of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in pursuance of and by virtue of the said decree, have granted, remised, released, conveyed and quit-claimed, and by these presents do grant, remise, release, convey and quit-claim unto the said Charles H. Mulliken, party of the second part, as such successor in trust, his successors and assigns, all right, title, interest, claim or demand whatsoever acquired by the said Ira Scott and Francis B. Peabody, in, through or by said deed of trust in and to the premises therein described as follows, to-wit: All that part of block sixteen (16), in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block, running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning; the said premises being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of a subdivision of said block sixteen (16) recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51.

Together with all the appurtenances and privileges thereunto belonging.

*In witness whereof* the said party of the first part have hereunto set their hands and seals this 10th day of September, A. D. 1873.

IRA SCOTT. [SEAL.]
FRANCIS B. PEABODY. [SEAL.]

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Frederick W. Packard, a notary public in and for said county, in the state aforesaid, do hereby certify that Ira Scott and Francis B. Peabody, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, }
this 10th day of September, A. D. 1873. }

F. W. PACKARD,

[NOTARIAL SEAL]

*Notary Public.*

On the back of the deed is the following file mark:

STATE OF ILLINOIS, } ss. *No. 125,988.*
COOK COUNTY. }

This instrument to be filed for record, September 13, A. D. 1873. Recorded in book 228 of records, page 626, September 17, 1873.

JAS. STEWART,

*Recorder.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 5a," decree in the case of *Taylor, et al.*, vs. *Taylor, et al.*, number 44,331, filed March 4, 1879, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY,

February Term, A. D. 1879.

IN CHANCERY.

Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor,

*vs.*

Frank C. Taylor, Maria L. Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward St. Russell and The Franklin Savings Bank. } *Bill of Review.*

This cause coming on this day to be heard upon the bill of complaint and review filed herein, taken as confessed by the said defendants, Frank C. Taylor and Maria L. Taylor, and upon the answers of Robert C. Taylor, by his guardian *ad litem* appearing in open court, and the joint and several answers of Ira Scott, Francis B. Peabody, Edward W. Russell and Charles H. Mulliken and the answer of the Franklin Savings Bank, and the several replications thereto—and it appearing to said court that said defendants, Frank C. Taylor and Maria L. Taylor and Ira Scott and Francis B. Peabody, Edward W. Russell, Charles H. Mulliken and Robert Taylor were duly and personally served with process in said cause, and that the said defendants, the Franklin Savings Bank entered its appearance in said cause by Grant & Swift, its solicitors, and that said Scott, Peabody, Mulliken, Russell and the Franklin Savings Bank severally filed answers to the bill of com-

plaint in said cause, and that Robert C. Taylor was an infant, and that by an order of said court William Coffeen was duly appointed his guardian *ad litem*, and that said guardian *ad litem* duly filed his answer in said cause, neither admitting or denying the charges in said bill of complaint and review, but requiring that the same should be proved; and it further appearing to said court that no plea, answer or demurrer was filed in this cause by said defendants Frank C. Taylor and Maria L. Taylor, and that their default was duly entered, and that an order was entered in this cause that said bill of complaint be duly taken as confessed against them, and the court having heard and considered the evidence offered in the trial of this cause by the complainants and the defendants, and being fully instructed and advised in the premises, doth hereby find, determine and decree, that on the 23d day of July, A. D. 1873, Frank C. Taylor and Maria L. Taylor filed in this court a certain bill of complaint, entitled to the August Term thereof, against Frank C. Taylor and Alexander Taylor, Ira Scott and Francis B. Peabody, a copy of which bill of complaint is annexed to the bill of complaint and review in this cause, and marked "Exhibit No. 1."

That on the 6th day of August, A. D. 1873, a decree was passed and entered in said cause by this court.

That said decree is on the records of this court duly entered and enrolled, and that a copy of the same is annexed to the bill of com plaint and review in this cause, marked "Exhibit No. 2."

That since the entry and enrolling of said decree above described it has been discovered that the deed of trust referred to in the bill of complaint filed in said cause, as made by Maria L. Taylor and Frank C. Taylor to Ira Scott, as trustee, on the 13th day of June, A. D. 1871, was not destroyed by fire on Octeber 8 and 9, 1871, or at any time, and the said deed of trust has been discovered.

That a copy of said deed of trust is set forth in "Exhibit 3," to the bill of complaint and review filed in this cause.

That said deed of trust has come into the possession of the complainants in the bill of complaint and review in this cause, Frank C. Taylor and Maria L. Taylor and Josephine S. Taylor and Alexander Taylor, who have produced the same.

That it is newly discovered evidence, not possible for these complainants to have produced on the hearing on said original bill of complaint above referred to.

That the decree above described, entered and enrolled in the original cause on the 6th day of August, A. D. 1873, which is described in the bill of complaint and review in this cause, and a copy of which is annexed to said bill and marked "Exhibit No. 2," is erroneous, and that the proceedings in said cause should be reviewed, and the said deed reviewed and reversed and set aside.

sixteen ( 16 ), in Bushnell's addition to Chicago, according to the plat of the subdivision of block sixteen (16), in said Bushnell's addition, which is recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, did by her deed of that date, her said husband joining, convey said premises to the defendant Ira Scott in trust for herself, her husband and children, a copy of which said deed of trust is filed herewith as "Exhibit A," to which your petitioner prays leave to refer for greater certainty.

Your petitioner further represents that in the said trust deed it was, among other things, provided that the building and improvements then standing on said premises might be removed, and the whole, or any portion thereof, might be built upon or improved for the purpose of providing revenue, and that during the joint lives of the said Frank C. Taylor and Maria L. Taylor, they should have the general management of said premises, acting in concurrence and with the approval of the said Ira Scott, his successor or successors in trust, and under the restrictions and limitations in said trust deed contained.

Your petitioner further represents that said trust deed remaining in full force, and the said Ira Scott being seized of the premises aforesaid by virtue thereof, and the said Maria L. Taylor and the said Frank C. Taylor being alive, about the 27th day of August, A. D. 1872, the said Frank C. Taylor and Maria L. Taylor, acting in concurrence and with the approval of the said Ira Scott, resolved to employ and did employ your petitioner to perform the carpenter work for certain houses then about to be erected by them upon the said premises; and thereupon, and on the day last named, the said Frank C. Taylor, in his own behalf, and in his own name, and also in behalf of, and as the agent of his said wife, and of the said Ira Scott, and at the request of his said wife, and with the concurrence of the said Ira Scott, made a written contract with your petitioner for the purpose of carrying out said agreement for said carpenter work, a copy of which said written contract is filed herewith as "Exhibit B," and your petitioner prays leave to refer to said copy for greater certainty, and that the same may be considered a part of this petition.

Your petitioner further represents that he pursued said contract to the letter, furnishing the labor and material therein stipulated within the time, and in the manner therein specified; he states that it was provided in said contract that he should follow up the mason as rapidly as possible, and finish and put in their proper places, joists, window frames, door frames, and all other materials and work that should be done by the carpenter, at such times as might be necessary so that the masonry work should not be delayed, and

that for each and every day that he should delay the masons or plasterers, he should pay to said Frank C. Taylor fifty ($50) dollars, and that he should have the building ready for occupancy by or before the 25th day of December, A. D. 1872, provided the mason should have the plastering done by or before the 1st day of November, A. D. 1872, except the hard finish, cornice and center pieces, which should be done after that date as soon as possible. And it was further provided that for each and every day your petitioner should be delayed by the mason work or plastering, he should receive from the said Frank C. Taylor fifty ($50) dollars.

Your petitioner further showeth that he was ready to complete his said contract by the 25th day of December, A. D. 1872, but that he was prevented from so doing by the delay of the mason in completing the plastering, and that he was so delayed until the 25th day of January, A. D. 1873; that on the 25th day of January, A. D. 1873, the said plastering having been just completed, your petitioner again entered upon the said work, and completed the same by the 15th day of March, A. D. 1873, a period within the time specified in the contract, taking into account the delay experienced by the failure of the mason to complete the plastering.

Your petitioner further says that during the progress of the said work the said Frank C. Taylor and Maria L. Taylor directed your petitioner in the prosecution of the said work, and were at all times cognizant of his proceedings therein; and that after the completion of the said contract, the said Frank C. Taylor, on his own behalf, and representing his said wife, and also the trustee, accepted the said work, and promised to pay the balance then due thereon.

Your petitioner further showeth that by virtue of the said contract your petitioner was to receive for the said work the sum of fifteen thousand seven hundred and fifty dollars ($15,750) during the progress thereof on written certificates issued by Messrs. F. & E. Baumann, superintendents; said written certificates to be based upon proper estimates of the work actually performed upon the building, less fifteen (15) per centum as a margin, which margin was to be accumulated and lastly paid with the final certificate, which was not to be issued before the work under said contract was fully and finally completed.

Your petitioner further showeth that, as the work progressed, the said superintendents from time to time issued written certificates to your petitioner, based upon proper estimates of the work actually performed upon the building, less fifteen (15) per centum as a margin; and upon the completion of the said work, and on or about the 6th day of May, A. D. 1873, issued the final certificate, including the said fifteen per cent. reserved upon the said work, and the balance remaining unpaid upon the said contract.

Your petitioner further showeth that the said final certificate amounted to the sum of seventeen hundred and eleven dollars and twenty-five cents ($1,711.25), which the said Frank C. Taylor accepted, approved and paid, and that there now remains due and unpaid upon the said original contract the sum of three thousand dollars ($3,000) only, the balance having all been paid; that for said sum of three thousand dollars ($3,000) your petitioner holds the certificate of the said superintendents, dated March 27, A. D. 1873, which certificate the said Frank C. Taylor, on his own behalf, and as agent of the said Maria L. Taylor and of the trustee of the said property, has accepted, and has repeatedly promised to pay, but the sum is now wholly due and unpaid.

Your petitioner further showeth that by virtue of the said contract your petitioner is entitled to a sum of $50 a day for the entire time during which he was delayed in his work by the failure of the said mason to complete the said plastering; that such delay was protracted during a period of eighty-eight days, making the claim of your petitioner for damages the sum of $4,400, which sum, added to the balance due on the said certificate, makes a total principal of $7,400 due to your petitioner by the said Frank C. Taylor and Maria L. Taylor, and the trustee of the said property, upon the said contract, upon which interest should be cast at the rate of six per cent. from the date of the completion of the said contract.

Your petitioner further showeth that during the progress of the work, and at the conclusion thereof, he was requested and directed by the said Frank C. Taylor, representing himself and his said wife and the trustee of the said property, to perform certain extra work, and was also directed from time to time by the said superintendents, representing the aforesaid parties in interest, to perform certain extra work upon said premises; that he did perform the said extra work to the satisfaction of the said superintendents and the said parties in interest, and said extra work was accepted and approved by the said parties, the said Frank C. Taylor in person accepting the same, representing himself and his said wife, and the trustee of said property, and the said superintendents also accepting same; that the said extra work was completed about the first of April, except the wood sheds, which were finished on or about the 10th day of May, A. D. 1873; that on the 6th day of May, 1873, the said superintendents issued to your petitioner a certificate for fifteen hundred dollars ($1,500) on account of said extra work, which certificate was presented to the said F. C. Taylor, as representing himself, his said wife, and the trustee of the said property, and was by him accepted and approved.

Your petitioner further showeth that in addition to the said fifteen hundred dollars he earned in performing said extra work and in furnishing the materials therefor, the sum of sixteen hundred and sixty-two dollars and seven cents ($1,662.07), making a total of $3,162.07 for the price and value of said extra work and material, and that being desirous of obtaining a full settlement of his said claim for extra work, he duly notified the said F. C. Taylor, representing himself and his said wife and the trustee of the said property, and all the parties in interest, that he would apply to the said superintendents upon a day specified in said notice for a final certificate for the said extra work, and that he attended upon the said superintendents at the day named, and from time to time thereafter, while the said superintendents were engaged in settling his account, and that on the 9th day of September, A. D. 1873, the said superintendents settled his said account and allowed him for his said extra work, in addition to said sum of $1,500, the further sum of $662.07, and issued to him the final certificate for the said extra work.

Your petitioner further showeth that all of said certificates that have remained unpaid, to wit: The said certificate for $3,000, being the balance due upon the original contract, aside from the said claim for delays; the said certificate for $1,500 on account of the said extra work, and the said final certificate of $1,632.07, are now in the possession of your petitioner and ready to be produced as the court may direct.

And your petitioner further showeth that he attended, by his agent, at the office of the said Frank C. Taylor, and made a demand for the payment of the amount due him upon the said contract for the said extra work, and also for the said damages for delay, but that the said Taylor neglected and refused and still neglects and refuses to pay the same or any part thereof, and there is now due and unpaid to your petitioner from the said Frank C. Taylor, Maria L. Taylor and the trustee of said property on account of said contracts, extra work and materials, as follows: March 27, 1873, $3,000; May 6, 1873, $1,500; October 9, 1873, $1,662.07; and damages for delay, $4,400; total, $10,562.07, with interest thereon at the rate of six per centum per annum from the dates of said several certificates, and with interest on said damages from the 15th day of March, 1873, at the same rate.

Your petitioner further showeth unto your Honors that to the aforesaid sums of money there are no offsets.

Your petitioner further showeth that since the said contract was entered into, the precise date he cannot state, the said Ira Scott has been removed from his position as trustee under said deed, and that the defendant Charles H. Mulliken has been substituted,

and that he is now the trustee for the said property, and that he has succeeded to the rights and liabilities of the said Ira Scott under the said contract.

Your petitioner further states that all the work, materials and labor aforesaid of your petitioner were expended upon the said premises.

Your petitioner further states on information and belief that on or about the 26th day of June, 1872, the said Frank C. Taylor and Maria L Taylor executed and delivered to one Edward Brown, a defendant herein, and who resided in the said city of Chicago, as trustee, a certain deed of trust securing the payment of a note owned by the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, which said deed of trust was on the 26th day of June, 1872, recorded in the office of the recorder of deeds of said Cook county; and your petitioner is informed and believes that the said Edward Brown and the said Franklin Savings Bank claim some interest in or lien upon said property by virtue of the said trust deed.

Your petitioner further states that very recently, but the precise date he is unable to state, the said Charles H. Mulliken, trustee, the said Frank C. Taylor and Maria L. Taylor have executed and delivered to one Francis S. Howe, of the city of Chicago, deeds of trust on portions of said premises to secure the payment of certain sums of money therein specified, to the said Franklin Savings Bank, of Pawtucket, in the state of Rhode Island. And your petitioner is informed and believes, and therefore states, that the said Francis S. Howe and the said bank claim some interest in or lien upon said property or some part thereof by virtue of said trust deeds.

Your petitioner further states on information and belief that George Taylor and ——— Charnley, both of the city of Chicago aforesaid, claim some title to or interest in portions of said premises, but your petitioner is unable to state the precise nature of their said claims, but he does and will insist that the claims of all the persons aforesaid are subordinate to those of your petitioner, and that your petitioner now has a valid and subsisting lien upon all of the said premises for the amount so due him as aforesaid, prior to the claims of all the persons aforesaid, and of all others.

Your petitioner further showeth that Francis B. Peabody was named as the alternate trustee in the trust deed first above named, and that there are now living, born of said marriage between the said Frank C. and Maria L. Taylor, the following children, to-wit: Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and an infant child whose age and sex is unknown to your petitioner.

Wherefore your petitioner prays that the said Ira Scott, Frank C. Taylor, Maria L. Taylor, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and the said infant child of the said Frank C. and Maria L. Taylor; also the said Edward Brown, the said Franklin County Savings Bank, of Pawtucket, in the state of Rhode Island; the said Francis S. Howe, of said Cook county, and the said Charles H. Mulliken, ——— Charnley and George Taylor may be made defendants herein, and may without oath (answer under oath being waived, pursuant to the statute), all and singular the premises herein, and that the amount of your petitioner's aforesaid claim may be ascertained, and that the same may be declared to be a valid and first lien upon the said premises, superior to the claims of all the defendants aforesaid, and that a decree may be entered for the payment thereof to your petitioner, and that in default of such payment said premises may be sold pursuant to the mechanics' lien law; and that your petitioner's said amount may be paid out of the proceeds of such sale, or for such other and further relief as may be agreeable to equity.

May it please your Honors also to grant unto your petitioner the writ of summons of the people of the state of Illinois, issued out of and under the seal of this Honorable court, to be directed to the sheriff of said county, demanding him to summons the defendants each of them on a day therein to be inserted, personally to be and appear before your Honors in this court to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as shall be agreeable to equity; and your petitioner will ever pray.

HENRY GILSDORFF.

JOHN WOODBRIDGE,
*Solicitor and of Counsel for Petitioner.*

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Henry Gilsdorff, being duly sworn, doth depose and say that he is the petitioner who subscribed the annexed petition; that he has heard the same read and knows the contents thereof; and that the same is true of his own knowledge, except the statements therein made on information and belief, and, as to those statements, he believes the petition to be true.

HENRY GILSDORFF.

Subscribed and sworn to this 13th day of September, A. D. 1873.

M. H. DEMENT,
*Notary Public.*

CIRCUIT COURT OF COOK COUNTY.

MECHANICS' LIEN.

Henry Gilsdorff,
*vs.*
Frank C. Taylor, Maria L. Taylor, Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, the infant child (name and sex unknown) of Frank C. and Maria L. Taylor, Edward Brown, the Franklin Savings Bank of Pawtucket, in the state of Rhode Island, Francis S. Howe, Charles H. Mulliken, ——— Charnley, and George Taylor.

STATE OF ILLINOIS, }
COOK COUNTY. }

Henry Gilsdorff, being duly sworn, doth dispose and say that he is the petitioner in the above described suit, and that the defendant, The Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, is a non-resident of the state of Illinois, and is located and doing business in the state of Rhode Island.

HENRY GILSDORFF.

Sworn and subscribed to before me, }
the 13th day of September, 1873. }

JACOB GROSS,
*Clerk.*

By Mr. KENDALL, I also offer in evidence petition of F. & E. Baumann, in the case of *Gillsdorff* vs. *Taylor, et al.*, as complainants' "Exhibit 6a," which is as follows:

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

CIRCUIT COURT COOK COUNTY.

TO THE HONORABLE THE JUDGES OF SAID CIRCUIT COURT:

Your petitioners, Frederick Baumann and Edward Baumann, partners under the firm name of F. & E. Baumann, respectfully represent unto your Honors, that they are carrying on business in the city of Chicago, in said county, as architects and superintendents, and have been engaged in that business for several years last past. Petitioners further represent that on or about the 13th day of June, A. D. 1871, one Maria L. Taylor, wife of Frank C. Taylor, being seized in fee simple of lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, in said county, did, by her deed, her husband joining, convey said premises to one Ira Scott in trust for herself, her husband and children. That by said trust deed it was among other things provided that the buildings and improvements then standing on said premises might be removed and the whole or any part of said premises might be built upon or improved for the purpose of providing revenue, and that during the joint lives of said Frank C. Taylor and Maria L. Taylor they should have the general management of said premises, acting in concurrence and with the approval of said Ira Scott, his successor or successors in trust, and under the restriction and limitations in said trust deed contained. That afterwards, but at what particular time, petitioner is unable to state, the said Ira Scott has been removed from his position as such trustee, and that one Charles H. Mulliken has been substituted, and that he is now the trustee for said property.

Your petitioner further shows that said trust deed remaining in full force, and the said Ira Scott being seized of said premises by virtue thereof, and the said Maria L. and Frank C. Taylor being alive, sometime in the month of March, 1872, the said Frank C. Taylor and Maria L. Taylor, acting in concurrence and with the

approval of said Ira Scott, and in conformity with the power vested in them by said trust deed, employed your petitioners to make all the necessary plans, drawings and specifications for a certain block of five houses to be erected at the corner of Maple and Dearborn streets in said city of Chicago on the premises above described, and to supervise the construction of all parts of the work to be done upon said premises, they agreeing to pay petitioners therefor a sum of money equal to three per centum of the total cost of the building and appurtenances.

And your petitioners aver that they did with all due diligence perform said work as architects and superintendents, and did make all the necessary plans, drawings and specifications for the said buildings on said premises, and supervise the construction of all parts of the work on said buildings, as required by said Frank C. and Maria L. Taylor, in concurrence and with the approval of the then trustee, completing the same on or about the 15th day of July, A. D. 1873. That the total cost of said buildings and appurtenances amounts to $54,000. That three per cent of that sum, being the amount of $1,620, is the price and value of petitioners' said work, that they have received on account thereof $500, leaving a balance of $1,120, that said Maria L. Taylor, Frank C. Taylor, or the then trustee, or either of them, though often requested to so do, have not as yet paid petitioners said sum of money. And there is now due your petitioners for said work by them performed on said premises the sum of $1,120, and that there are no offsets thereto.

Your petitioners further state that on the 13th day of September, A. D. 1873, one Henry Gilsdorff filed in this Honorable court his petition against said Frank C. Taylor, Maria L. Taylor and Ira Scott and Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and the infant child of Frank C. and Maria L. Taylor, also Edward Brown, The Franklin Savings Bank, of Pawtucket, Francis S. Howe, Charles H. Mulliken, —— Charnley and George Taylor, setting up a claim for mechanic's lien on the premises above described for the cause in his said petition alleged, and praying for a sale of said premises to satisfy said lien pursuant to the statute, which petition is still pending in this court.

Your petitioners therefore pray to be made parties plaintiff to said suit of the said Gilsdorff, and that the said defendants to the said suit may be made parties to this petition, and that each and all of the several parties may be required to answer all the material allegations herein (but without oath, their respective answer under oath being expressly waived), and that upon substantial proof thereof, the court will adjudge and decree the payment to pe-

titioners of the sum aforesaid within such time as this Honorable court shall direct, and in default thereof that said premises may be sold under the direction of this court to pay and satisfy said claim.

And that your petitioners may have such other and further relief as the nature of the case may require and to your Honors shall seem meet. And your petitioners will ever pray, etc.

FREDERICK BAUMANN and
EDWARD BAUMANN.

By GEORGE F. BLANKE,
*Their Solicitor.*

JNO. WOODBRIDGE and
GEORGE F. BLANKE,
*Solicitors and of Counsel.*

By Mr. KENDALL: I also offer in evidence the joint answers of Francis S. Howe, the Franklin Savings Bank, George Taylor, Ira Scott and Charles H. Mulliken, in the case of Henry Gilsdorff, *et al.*, *vs.* Ira Scott, *et al.*, as complainants' "Exhibit 6b," which are as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Of the June Term, A. D. 1874.

Henry Gilsdorff, *et al.*,
*vs.*
Ira Scott, *et al.*, } *Mechanics' Lien.*

*The joint and several answers of Francis S. Howe, the Franklin Savings Bank, of Pawtucket, Charles H. Mulliken, George Taylor and Ira Scott, defendants, to the petition of Henry Gilsdorff, et al., petitioners.*

These defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit and advantage

of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition contained, for answers thereto, or so much thereof as these defendants are advised is material or necessary for them to make answer to, answer say that they have no personal knowledge or information of the several matters and things contained in said petition and relative to the contract for work, labor and materials alleged in said petition made between said petitioners and said Frank C. Taylor, or the terms of said contracts or the sums paid thereon or the balance due said petitioners or anything relating thereto save as the same appear and are set forth in said petition, and these defendants neither admit or deny said matters or any of them, but pray that said petitioners shall make strict proof thereof. And, further answering, these defendants admit that their said co-defendants, Frank C. and Maria L. Taylor, executed the said trust deed in said bill described to said defendant Scott and Peabody, his successor in trust, the said Maria L. being then the owner of said premises therein described. The said Scott and Peabody afterwards resigned their positions as trustees, and these defendants say that thereupon the said Frank C. and Maria L. Taylor brought a suit in chancery in the Superior court of Cook county in which said trustees and all their children named in said bill and all parties interested in said trust were made parties. And in said bill said complainants prayed for the appointment of a new trustee, and that such new trustee might be authorized to mortgage or sell any part of said premises to the amount of $53,700, being the value and cost of certain improvements made therein, the same as are described in said bill; and afterwards, to-wit, on —— the day of —— said Superior court entered a final decree in said suit, and thereby appointed said Mulliken, as trustee in place of said Scott and Peabody, and authorized him as such trustee to mortgage, or sell said premises to said amount for the purpose of paying off the cost of such improvement, and of reimbursing said Frank C. Taylor, any money by him advanced toward such improvements, as will fully appear by the records of said court, to which these defendants refer; that said Mulliken accepted said trust afterwards and in accordance with said decree, and then defendants further answering the said Scott on information and belief, say that said Mulliken executed a trust deed on said premises to said Howe as stated in said bill; and said defendants further state that said Scott and said Frank C. and Maria L. Taylor, had previously and while said Scott was trustee made a subdivision of said premises. Then they had duly executed and acknowledged a plat thereof, subdividing said premises into five lots, and recorded said plat in the office of the recorder of deeds of said Cook county, in book 5 of maps, page

24; that said Mulliken, as trustee, and said Frank C. and Maria L. Taylor executed to said defendant Francis S. Howe, four certain trust deeds, dated the 23rd day of August, A. D. 1873, and recorded in the records of said county on the 25th day of said August. That in and by said four trust deeds lots 1, 2, 4 and 5 of said subdivision above referred to were respectively conveyed to said Howe as trustee, to secure the sum of $36,000, each of said trust deeds being given to secure the payment of one note of $9,000, of even date thereof to the order of the said Franklin Savings Bank, of Pawtucket, and the interest coupons thereon. That all the proceeds of said mortgage were paid by said Mulliken, in payment of said improvements or money advanced by said Taylor therefore as required by said decree. That a trust deed had been executed prior to said contracts by Frank C. and Maria L. Taylor to Edward O. Brown, trustee, for the benefit of said bank, as stated in said bill, for $20,000. That such deed was given to secure payment of said sum of $20,000, as stated in said bill, borrowed by Frank C. Taylor to improve said lot, and said mortgage has been so applied, and that said trust deed was released by said Brown in the execution of said deeds to said Howe, and said trust deed to said Howe, received in lieu thereof by said bank. These defendants, further answering, say it is not true, as alleged in said bill, that said improvements in said premises were made with the assent or concurrence of said Scott as trustee, or that said Taylor in making said improvements, acted as the agent of said Scott, or that said Scott in any way sanctioned or approved of said improvements; on the contrary, they say that said Taylor made said improvements and all contracts relating thereto in his own name and on his individual responsibility and without consultation with or the approval of the said Scott. And these defendants deny that said trust estate is properly chargeable with the cost of said improvements or any part thereof except as they have been or may be charged herewith under the decree of said court above set forth. That neither said trustee or said estate is properly subject thereto, and that the same can only be charged wherewith in the method provided in said deed of trust as set forth in said bill. And these defendants, said Howe and said savings bank, claim that said trust deed executed to said Howe is good and valid as against said claims of said petitioners, and pray that the court will protect their interest therein. And said defendants Mulliken and George Taylor, further answering, say that said Mulliken, as trustee, sold one of said lots to said George Taylor, to-wit: Lot 3, of said subdivision, under said decree, for the purpose of raising money to pay said improvement, and in the manner provided by said trust deed, to-wit: In the written request of said Taylor and wife, and executed a deed

therefor to said Taylor, and said Taylor claims that his said title derived under said sale is good and valid as against any claims of said petitioners, and prays to be protected against such claims. All which matter and things these defendants are ready to aver, maintain and prove, as this Honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

FRANCIS S. HOWE,
THE FRANKLIN SAVINGS BANK,
GEORGE TAYLOR,
IRA SCOTT and
CHARLES H. MULLIKEN.

HOWE & RUSSELL,
*Solicitors and of Counsel.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6c," answer of infant defendants in case of *Henry Gilsdorff, et al.*, vs. *Frank C. Taylor, et al.*, filed February 21, 1874, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Of the February T., A. D. 1874.

Henry Gilsdorff, *et als.*,
*vs.*
Frank C. Taylor, *et als.* } *In Chancery.*

*The joint and several answer of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, infants, under the age of eighteen years, by Rufus C. Hall, their guardian ad litem, four of the defendants to the bill of complaint of Henry Gilsdorff, et al.*

These defendants, answering by their said guardian, say that they are strangers to all and singular the matters and things in the said

bill of complaint contained, that these defendants are infants under the age of eighteen years, and claim such interest in the premises in the said bill mentioned, as they are entitled to, and submit their interests to the protection of this Honorable court.

RUFUS C. HALL,
*Guardian ad litem for said infant defendants.*

HOWE & RUSSELL,
*Solicitors for Guardian ad litem.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6d," replication in the last above mentioned case, filed the 3d day of June, 1874, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Of the May Term, A. D. 1874.

Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan. *vs.* Frank C. Taylor, *et al.* } *Petition for Mechanics' Lien.*

*The replication of Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, complainants, to the answer of Francis S. Howe, Franklin Savings Bank, of Pawtucket, Charles H. Mulliken, George Taylor and Ira Scott, five of the defendants in the above suit.*

These repliants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto, saith, that they do and will aver, maintain and prove said petition to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and

insufficient in the law to be replied unto by these repliants; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove, as this Honorable court shall direct, and humbly pray as in and by their petition they have already prayed.

WOODBRIDGE & BLANKE,
*Solicitors for Complainants.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6e," replication to the last above mentioned cause, filed the 3d day of June, 1874, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE CIRCUIT COURT OF COOK COUNTY.

Of the May Term, A. D. 1874.

Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan. *vs.* Frank C. Taylor, *et al.* } *Petition for Mechanics' Lien.*

*The replication of Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, complainants, to the answer of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, by Rufus C. Hall, their guardian ad litem.*

These repliants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto, say, that they do and will aver, maintain and prove said petition to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and

insufficient in the law, to be replied unto by these repliants; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove as this Honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

WOODBRIDGE & BLANKE,
*Solicitors for Complainants.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6f," instructions of plaintiff and of defendant given in the above entitled cause, filed July 14, 1874, which are as follows:

PLAINTIFF'S INSTRUCTIONS.

1. If the jury shall believe from the evidence that the trust deed alleged in the petition is duly proven, and that the contract alleged between the said Gilsdorff and the said Frank C. Taylor, was duly executed as alleged, and was made by the said Frank C. Taylor with the assent of the said Maria L. Taylor, and with the assent and concurrence of the said Ira Scott, and as the agent of the said Ira Scott and of the persons named in said trust deed as a beneficiary interested in said property, and that under said contract said Gilsdorff furnished the labor and materials required upon the premises named therein, and in all things complied with the said contract, then the jury should find for him such sum of money, if any, as is proven by the evidence to be due; and if they shall further find from the evidence that the said Gilsdorff received from the superintendents F. and E. Baumann, certificates under said contract of the amount due him on said contract, and that he exhibited said certificates to the said Frank C. Taylor, as the agent of the parties aforesaid, at the several times when he received the same, and that thereupon the said Frank C. Taylor, for himself and as such agent, promised to pay the same, then the jury should allow interest on the amount of said certificates from their dates, at the rate of six per cent. per annum.

And if the jury shall further find from the evidence that the said Frank C. Taylor, under the authority above named, and as such agent made the contracts alleged in the intervening petitions with the said Sullivan and the said F. and E. Baumann, and that the said Sullivan and the said Baumann performed their contract, the jury should find for them such sums as they have proven in the evidence to be due.

2. The jury are instructed that the form of the contract and the fact that the said Taylor executed it apparently as principal, does not preclude the jury from finding that he also executed it on behalf of others, if his agency for others appears in the evidence.

6. If the jury believe from the evidence that before said Frank C. Taylor commenced building said houses (if they shall find from the evidence that he did commence building), he informed the said Ira Scott, then being trustee, of his intentions, and the said Scott made no objection, and that the said Scott knew of the building while the work was in progress; these are facts which the jury may consider in determining whether said Scott consented to, approved and concurred in said building.

7. If the jury shall believe from the evidence that the work progressed as claimed by the plaintiffs, and that during the progress of it the said Maria L. Taylor, wife of Frank C. Taylor, stood by and gave directions as to portions of the work, such facts are competent in deciding whether or not she did assent thereto. But if the jury shall find from the evidence that she did assent to such work she is estopped from denying that it was done with her assent; and if the contract was otherwise fulfilled, she is estopped from denying that plaintiffs have a lien upon the said premises.

If the jury shall believe from the evidence that the said Frank C. Taylor, with the concurrence of the said Maria L. Taylor, made the contracts in question, and that they were properly executed and fully performed, and that in pursuance of them the plaintiffs earned the amounts claimed, and if they shall further believe from the evidence that after the work was completed the same was assented to by Ira Scott, and that said Scott had knowledge of the contracts during the progress of the work, said Mulliken, his successor, assented to and approved thereof, such assent by said Scott and Mulliken constitutes a ratification of such contracts, and the existing trustee is estopped from denying the lien of the said plaintiffs.

4. If the jury shall believe from the evidence that the contracts alleged in the petitions were made with the full knowledge, approbation and consent of the said Maria L. Taylor, and that she did not disclose her interest, she cannot now object that the claims of petitioners, if proven by the testimony, are not liens upon said premises.

## Defendants' Instructions.

4. The jury are instructed that under the trust deed it was necessary for the defendants, Frank C. Taylor and Maria L. Taylor, to ob-

tain the approval and concurrence or ratification of the trustee to the improvement of the property, either before or after its completion. And unless the jury shall believe from the evidence that this was obtained, the trust estate cannot be charged with the debts contracted for its improvement, nor does the petitioners' action lie for a mechanics' lien. But such approval or concurrence or ratification may be shown by facts and circumstances as set out in instructions given for the petitioners.

The jury are instructed that under the contract with Gilsdorff, defendant Frank C. Taylor does not agree that the mason or plasterers' work shall be done by November 1, or any fixed date. That he is only liable for damages in case such work was not completed in a reasonable time under all the circumstances of the case. And the plaintiff Gilsdorff was delayed thereby. This is so if the masons did not have the plastering done by or before the 1st day of November, 1872, except the hard finish, cornices and center pieces.

The jury are instructed that for any delays in the mason's or plasterers' work the petitioner Gilsdorff is only entitled to his actual damages arising from such delays, unless they further believe from the evidence that the penalty of $50 per day was designed and intended by the parties as stipulated damages. If they find such sum was reserved as the penalty merely, the petitioner Gilsdorff cannot recover the full penalty unless the damages actually sustained amount thereto.

If the jury shall believe from the evidence that Sullivan, by unreasonable delay and by reason of his default and failure to do the work according to his contract, prevented the premises in question from being rented at a rental which might otherwise have been obtained—defendant Taylor is entitled as damages suffered by him by reason of such delay and failure to do his work as required by his contract, and to set off the same against the claim of Sullivan.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6g." decree entered in the above entitled cause, which is as follows:

Henry Gilsdorff, Frederick Baumann and Edward Baumann and James B. Sullivan.
8554
4383 *vs.*
Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor (and as the infant child, name and sex unknown, of Frank C. and Maria L. Taylor), The Franklin Savings Bank, of Pawtucket, state of Rhode Island, Francis S. Howe, Charles H. Mulliken and George Taylor.

*Petition for Mechanics' Lien and Intervening Petition.*

This cause coming on to be heard before his Honor, Judge Rogers, upon the motion of said defendants for a new trial, and the court, having fully considered the premises, and after hearing arguments of counsel, being now fully advised, doth overrule said motion for a new trial. And thereupon the said petitioner and intervening petitioners severally move for decrees on the said verdicts.

And it appearing that due service of process was had upon all of said defendants, except said Franklin Savings Bank, of Pawtucket, and that due service of notice by publication was had upon said Franklin Savings Bank, and the court being fully advised in the premises, doth order, adjudge and decree that the said petitioner, Henry Gilsdorff, do recover the sum of six thousand five hundred and eighty-five dollars and seventy-seven cents ($6,585.77) and his costs out of the said lot four (4) in block sixteen (16) in Bushnell's addition to Chicago, in said county, according to the plat of the subdivision of said block, which was recorded in the office of the recorder of deeds of Cook county, in book 165 of maps, page 51, with the buildings thereon; the said premises consisting of five dwelling houses and the ground and appurtenances thereto, located in the southeast corner of North Dearborn and Maple streets in said Chicago, the north house directly on said corner and the remaining houses connected therewith in a continuous block; and that the said intervening petitioners, Frederick Baumann and Edward Baumann, do recover the sum of eleven hundred and twenty dollars ($1,120) and their costs out of the same premises, and that the said intervening petitioner, James B. Sullivan, do recover the sum of twelve hundred and eighty-two dollars and ninety-one cents ($1,282.91) and his costs out of said premises.

And it is further ordered, adjudged and decreed that said petitioner and intervening petitioners are entitled respectively to mechanics' liens for the amounts found due them respectively upon the houses aforesaid, and upon the land upon which the same are erected.

And it is further ordered, adjudged and decreed, that unless Charles H. Mulliken, trustee, or the said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, the Franklin Savings Bank, of Pawtucket, Francis S. Howe and George Taylor, or either of them, shall, within twenty days of the date of the entry of this decree, pay to the said Henry Gilsdorff, and to the said Frederick Baumann and Edward Baumann, and to the said James B. Sullivan, the amounts found due them respectively as aforesaid, together with interest and their costs, then the said premises above described, or so much thereof as shall be needful, shall be sold at public auction to the highest bidder by Walter Butler, Esq., master in chancery of said county, or his successor in office, at the southeast corner of North Dearborn and Maple streets, in said Chicago, between the hours of nine o'clock in the morning and the setting of the sun of the same day, after notice by him of twenty days by publication in some newspaper of general circulation published in said city of Chicago, said notice to contain the time, terms and place of sale.

And it is further ordered that said master issue to the purchaser at such sale the usual certificate of purchase, and file in the office of the recorder of deeds of Cook county a duplicate certificate of purchase signed by said master, and that out of the proceeds of sale he pay the costs of this suit to be taxed, and retain his fees, disbursements and commissions for advertising and making said sale, and if the residue of the funds realized at said sale is sufficient for that purpose, that he pay from such residue to the said petitioner and intervening petitioners or their solicitors, the amounts found due them respectively as aforesaid, and if any balance remains that he pay the same into court, subject to its further order, and if said net purchase money shall be insufficient to pay said petitioner and intervening petitioners in full, said master shall pay the same to them *pro rata*.

And it is further ordered that said master make report to this court.

And it is further ordered that unless said promises are redeemed according to law, said master shall, after the period of redemption has expired, execute and deliver to the purchaser or purchasers at said sale, his, her, or their heirs or assigns, the usual master's deed conveying said premises to him, her, or them, and that upon the production of said master's deed or deeds, any of the defendants who may be in possession, their heirs, tenants or assigns, shall deliver possession of said premises to the holder or holders of said master's deed or deeds.

And it is further ordered that if either of the persons entitled to redeem as aforesaid prior to the sale shall pay to either the petitioner or the intervening petitioners, or to any one of them, the sum or sums found due him or them, leaving one or more of said sums unpaid, the sale of said premises shall proceed as above decreed in order to realize any sum or sums that may remain unpaid.

To all of which the said defendants, by their solicitor, now here except and pray an appeal to the Supreme court, which is granted on condition that said Frank C. Taylor, one of said defendants, doth within twenty days from date, execute and file an appeal bond in said cause in the penal sum of $2,000, with good and sufficient security thereto, to be approved by the court, or by the clerk of this court.

And it is further ordered that said defendants be, and they are allowed forty days from date in which to prepare and file a bill of exceptions in said cau...

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Jacob Gross, clerk of the Circuit court of Cook county, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order made and entered

of record July 20, 1874, in a certain cause lately pending in said court, on the common law side thereof, between Henry Gilsdorff, *et al.*, petitioners, and Frank C. Taylor, *et al.*, defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 22d day of February, 1875.

[OFFICIAL SEAL.] JACOB GROSS,
*Clerk.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6h," opinion of the Supreme court, delivered at the September Term, 1874, which is as follows:

Frank C. Taylor, *et al.*,
*vs.*
Henry Gillsdorff, *et al.*

Mr. Justice Sheldon delivered the opinion of the court:

This was a petition for a mechanics' lien, filed against appellants for labor and materials furnished in constructing certain dwellings on lot 4, block 16, Bushnell's addition to Chicago.

The case was submitted to a jury in the court below, which found the amounts due the several petitioners. Their verdict on this point is not questioned. There was a decree granting the prayer of the petition, and ordering the sale of the premises.

The premises were vested in a trustee, and it is urged as a ground for a reversal of the decree, that the whole estate in the premises could not be subjected to a mechanics' lien. The condition of the estate was this: On the 13th day of June, 1871, Maria L. Taylor, wife of Frank C. Taylor, being seized in fee simple of lot 4, conveyed it to Ira Scott, as trustee. Without now dwelling upon the several provisions of the trust deed, it may be considered as vesting the estate in the trustee, in trust for Mrs. Taylor during the joint lives of herself and husband, with remainder over to the heirs or devisees of the husband, and to the husband himself, if he survived the wife and their children. Frank C. Taylor made, in his own name, contracts with the several petitioners for the improvement of the lot by the erection of a block of houses. These contracts were made while Scott was trustee. Afterwards he resigned, and on a bill filed by Taylor and wife, one Mulliken was appointed trustee by the Superior court of Cook county. Mulliken, as trustee, mortgaged part of the premises

to Howe, to secure the payment of certain sums of money to the Franklin Savings Bank, and sold part to George Taylor, who are all defendants to the pitition. The bill claims that the entire premises be subjected to the lien of the petitioners; that the rights acquired under the conveyances are subject to their liens, and that the whole estate be sold to pay their demands.

The claim is, that the interest in remainder in this estate, held by the trustee for the heirs of Taylor, cannot be subject to a mechanic's lien.

Section 1, of the lien act provides, "Any person who shall by contract with the owner of any piece of land, furnish labor or materials," shall have a lien, etc.

Section 17. "The person who procures the work or materials to be done or furnished, shall be considered the owner, to the extent of his right or interest in the premises."

Section 21. "Parties in interest shall include all persons who may have any legal or equitable claim to the land."

There must be a contract with the owner. And it is contended that it is only the real and beneficial ownership which is subject to the lien, that a trustee who holds property for another's use, is not the owner intended by the statute; that the *cestuis que trust* are the real owners, and have the estate that the statute intends.

The particular provisions of the instrument creating the trust must affect the question.

There is an express provision in this deed of trust, that the whole or any portion of the premises may be built upon and improved for the purpose of providing a revenue and giving Frank C. and Maria L. Taylor the general management of the premises, acting in concurrence and with the approval of the trustee. And for the purpose of so building or improving, power is given to sell any portion of the premises, or to mortgage the premises to secure any loan for that purpose.

There is no absolute equitable estate, created in behalf of the children. Their estate is one, under the provisions and conditions of the trust deed. It is expressly made subject to be defeated by a mortgage for the purpose of building, and in part, by a sale of any portion for that purpose. And we do not see why, by clear intent, it is not made impliedly subject to be defeated by a building contract lien. Authority is given to build. A contract for building is necessary. A mechanics' lien is a statutory incident of such a contract.

The giving of the authority must be regarded as contemplating its ordinary incidents, and that they would exist. The power to raise money by sale or mortgage can only be cumulative. It cannot be held to exclude the power to make contracts for building, having the statutory incident belonging to such contracts, that of a mechanics' lien. For the purpose of building, there may be created upon the whole estate a lien by mortgage; and there appears no good reason why it may not be created by a contract for building. Because Frank C. Taylor made the contract, to hold that only his particular equitable interest in the premises, or that of himself and wife, should be subjected to the lien, is to take a too narrow view of the statute, and give an unreasonable construction to the trust deed. The improvement is not for the advantage of Taylor and wife alone, but incurs to the benefit of the whole estate. The trustee owned the legal estate in the land, with the right of improving it by building, and of charging it for such purpose, by sale or mortgage.

We cannot doubt that he was such an owner, within the meaning of the statute, that the entire estate in the premises was capable of being subjected to a mechanics' lien.

It is next objected that the trustee did not concur in, or approve of, the contracts made by Taylor.

The objection arises under this provision of the trust deed: "That the whole or any portion of the premises may be built upon and improved, and that during the joint lives of the said Frank C. and Maria L. Taylor, they shall have the general management of said premises, acting in concurrence and with the approval of the said Scott, and under the restrictions and limitations of all the trusts and provisions herein made."

There was no express concurrence or approval; all that there was, was only implied.

At the time of the making of the trust deed, Mr. and Mrs. Taylor occupied the premises as a homestead. Mr. Scott lived across the street from them. Before the buildings were commenced, Taylor informed Scott that he was going to build a block of buildings upon the lot. The latter knew of the buildings going up on the premises. He never objected, or made a hint of disapproval. But no express concurrence or approval appears.

It is material to consider the position of the latter as trustee. He was for the most part a passive trustee. He would seem to have had little more than a negative on the acts of management of Taylor and wife. The general management of the premises was in them, acting, it is true, in concurrence and with the approval of Scott. In case of a sale of any portion of the premises, it was to be on such terms, and in such manner as the Taylors should in writing request.

If there was to be a mortgage, it was only in case the Taylors should so elect, and they must unite in the mortgage, and it contain such covenants and provisions as they might deem best. It was not designated what was to be the mode of concurrence and approval, or how they should appear, except in the case of a deed or mortgage. The trustee was to unite in them. The general management of premises so situated would involve the doing of many important and constantly recurring acts, for the performance of which it could not be reasonably expected that the express approval and concurrence of the trustee should be obtained.

Express concurrence and approval were not required by the trust deed.

The dwelling house upon this lot, in which the Taylors resided, had been burned.

To rebuild, the best interest of all concerned would seem to require. The buildings were being erected by those intrusted by the trust deed with the general management of the property, whose own personal interests were chiefly involved, furnishing a guaranty that the construction of the buildings would be in a manner which would be most advantageous to the estate. This, for the most part, passive trustee would seem to have had no occasion to withhold his concurrence or approval, and there is no pretense that he did. Having been informed beforehand of the intended erection of the buildings, and they going up before his own eyes, absence of disapproval, under such circumstances, amounted to approval.

Concurrence and approval may be by conduct, as well as by word. And especially would those entering into contracts with Taylor for furnishing labor or materials, have the right to infer the fact of concurrence and approval from such conduct.

We are of the opinion that there was sufficient evidence from which to infer the implied concurrence and approval of the trustee, and that no more than that was here required.

Although the contracts were made by Frank C. Taylor alone, the evidence shows that Mrs. Taylor knew and approved of them, and gave directions during the progress of the work, so that, so far as here may be necessary, she may be considered as a party to the contracts.

One of the claims upon which a lien was allowed, that of the Baumanns, is for services as architects and superintendents, and it is insisted that they have not furnished either labor or materials for erecting the buildings, within the meaning of the statute, and so are not entitled to a lien. The claim was not for services as mere architects, but as architects and superintendents. The jury found in favor of the claim. Without saying how it might be with a mere architect, who simply drew a plan of the buildings, we cannot say that in the

work of superintendence of the buildings, the jury were not authorized to find that there was such labor, which was within the act, which provides a lien for any person who shall "furnish labor for erecting any building." Like views seem to have been held elsewhere under similar statutes. *The Bank of Pennsylvania* vs. *Gries*, 35 Penn., 423; *Mulligan* vs. *Mulligan*, 18 La. Ann., 30.

Decree affirmed.

Mr. Justice McAllister dissenting: The trust under which Scott held the premises was not a mere passive, but an active trust. So that the legal title was in him, notwithstanding the statute of frauds. The provisions of the mechanics' lien law make an oral or implied contract valid for the purpose of a foundation for proceedings which may divest title. In other words, such a contract is thereby rendered valid, and under the provisions of the act, is one which relates to and affects an interest in real estate. But the statute requires, in order to give an oral contract such an effect, that it be made with the owner. This statute, for obvious reasons, has heretofore received, in this court, a strict construction. By such a construction, the legal title could only be affected by the contract in which the lien is predicated, by Scott becoming a party to it. But the opinion of the majority of the court goes upon the ground that knowledge by the trustee of the fact of the improvements being made, and the silence of the trustee are equivalent to his becoming a party, and it is not placed upon or attempted to be brought within the range of the principle of estoppel *in pais*. I know of no doctrine or principle, aside from that of estoppel, upon which his silence and non-action could, under any circumstances, be regarded as equivalent to his execution of the written contract under which the lien is claimed to have arisen, and most certainly, the doctrine of the estoppel *in pais* has no application to this case. His "concurrence," within the meaning of the trust deed, should, if the contract for improvements was in writing, have been manifested by writing; if oral, by being a party to it. In no other way could the title in him be divested by proceedings based upon the contract. Conceding that he was in no respect a party to contract—and he clearly was not—the mere fact of silence, of non-action, or inattention does not constitute concurrence, which means more than passive or implied acquiescence. But silence, where a person is under no duty to speak or act, cannot be construed as either concurrence or acquiescence. The trustee was in no sense a party to the contract, nor did he have any agency whatever in procuring work or materials to be done or furnished. There is no view I can take of the case which brings it within the lien law, so as to subject the legal or entire interest in the premises to the lien.

Mr. Chief Justice WALKER: I concur in the views expressed by my brother, McAllister, in this case.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6i," mandate of the Supreme court in the above entitled cause, filed February 24, 1875, which is as follows:

At a Supreme court begun and held at Ottawa, on Tuesday, the 8th day of September, in the year of our Lord one thousand eight hundred and seventy-four, within and for the Northern grand division for the state of Illinois:

| | | | |
|---|---|---|---|
| Present: | PINKNEY H. WALKER, | Chief | Justice. |
| " | SIDNEY BREESE, | Associate | Justice. |
| " | JOHN M. SCOTT, | " | " |
| " | WM. K. MCALLISTER, | " | " |
| " | BENJAMIN R. SHELDON, | " | " |
| " | JNO. SCHOLFIELD, | " | " |
| " | ALFRED M. CRAIG, | " | " |

In vacation after September Term, January 30, A. D. 1875.

Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, The Franklin Savings Bank, Pawtucket, Rhode Island, Charles H. Mulliken, George Taylor and Francis S. Howe.
No. 172. *vs.*
Henry Gilsdorff, James B. Sullivan, Edward Baumann and Frederick Baumann.

*Appeal from Cook*

On this day came against the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid is there anything erroneous, vicious or defective, and that the record is no error. Therefore it is considered by the court that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellees recover of and from the said appellant their costs by them in this behalf expended, and that they have execution thereof.

I, Cairo D. Trimble, clerk of the Supreme court of the state of Illinois, do hereby certify that the foregoing is a true copy of the final order of the said Supreme court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said Supreme court, at Ottawa, this 19th day of February, in the year of our Lord one thousand eight hundred and seventy-five.

C. D. TRIMBLE,
*Clerk of the Supreme Court.*

[SUPREME COURT SEAL.]

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 6j," master's report of sale in the above entitled cause, filed the 19th day of July, 1881, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

CIRCUIT COURT OF COOK COUNTY.

Henry Gilsdorff, Frederick Baumann, and Edward Baumann, and James B. Sullivan.
*vs.*
Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor (sued as the infant child, name and sex unknown, of Frank C. and Maria L. Taylor), The Franklin Savings Bank, of Pawtucket, state of Rhode Island, Francis S. Howe, Charles H. Mulliken and George Taylor.

*No. 8,554. Petition for Mechanics' Lien and Intervening Petition.*

REPORT OF SALE, AND DISTRIBUTION OF PROCEEDS OF SALE, BY THOMAS G. WINDES, MASTER IN CHANCERY.

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF COOK COUNTY, IN CHANCERY SITTING:

In pursuance of a decree entered in the above entitled cause, on the 20th day of July, A. D. 1874, I, Thomas G. Windes, a master

in chancery of said court, and successor in office to Walter Butler, late master in chancery of said court, respectfully report that more than twenty (20) days having elapsed after the date of said decree, and neither of said defendants having paid the money by said decree required to be paid, I duly advertised, according to law and to said decree, the premises in said decree and hereinafter described, to be sold at public vendue, to the highest bidder for cash, at the hour of 10 o'clock, in the forenoon, on Friday, the 15th day of July, A. D. 1881, at the southeast corner of North Dearborn and Maple streets, in the city of Chicago, in said Cook county, by causing a notice containing the title of said cause, the names of the parties thereto, the name of the court wherein such cause was pending, and a description of the premises to be sold, and a statement of the aforesaid time, place and terms of said sale, to be published for twenty successive insertions immediately prior to said day of sale, to-wit: Twenty times in the *Chicago Daily News*, a public secular daily newspaper of general circulation, printed and published every day in the city of Chicago, county of Cook, and state of Illinois. The date of the first paper containing which notice was the 21st day of June, A. D. 1881, and the date of the last paper containing said notice was the 14th day of July, A. D. 1881, a certificate of which publication is hereto attached, marked "Exhibit A."

That at the time and place so designated for said sale, I attended to make the same, and offered and exposed said premises for sale at a public vendue, to the highest bidder, for cash in the following order, to-wit:

First: I offered any portion or parcel of said premises, whereupon Hiram H. Thomas offered and bid for the portion or parcel of said premises firstly hereinafter described the sum of one hundred and fifty dollars ($150), and that being the highest bid offered therefor, I accordingly struck off and sold to said bidder for said sum of money the said last mentioned premises, which are situated in the city of Chicago, county of Cook and state of Illinois, and described as follows, to-wit:

The south twenty (20) feet of lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of the subdivision of said block which was recorded in the office of the recorder of deeds of Cook county, in book 165 of maps, page 51, with the buildings thereon and the appurtenances thereto.

Second: I offered any of the remaining portion of said premises except said south twenty (20) feet, whereupon Hiram H. Tho-

mas offered and bid for the portion next hereinafter described the sum of one hundred and fifty dollars ($150), and that being the highest bid offered therefor, I accordingly struck off and sold to said bidder for said sum of money, the said last mentioned premises, which are situated in the city of Chicago, county of Cook and state of Illinois, and described as follows, to-wit:

The north twenty (20) feet of the south forty (40) feet of lot four (4), in block sixteen (16) in Bushnell's addition to Chicago, according to the plat of the subdivision of said block which was recorded in the office of the recorder of deeds of Cook county, in book 165 of maps, page 51, with the buildings thereon and the appurtenances thereto.

Third: I offered any of the remaining portion of said premises except the portions above sold, whereupon Hiram H. Thomas offered and bid for the portion next hereinafter described the sum of one hundred and fifty dollars ($150), and that being the highest bid offered therefor, I accordingly struck off and sold to said bidder for said sum of money the said last mentioned premises which are situated in the city of Chicago, county of Cook and state of Illinois, and described as follows, to-wit:

The north twenty-four (24) feet of lot (4) in block sixteen (16) in Bushnell's addition to Chicago, according to the plat of the subdivision of said block, which was recorded in the office of the recorder of deeds of Cook county, in book 165 of maps, page 51, with the buildings thereon and the appurtenances thereto.

Fourth: I offered any of the remaining portion of said premises, except said portions sold as aforesaid, whereupon Hiram H. Thomas offered and bid for the portion next hereinafter described, the sum of twelve thousand five hundred and thirty-seven dollars and ninety-two cents ($12,537.92), and that being the highest bid offered therefor, I accordingly struck off and sold to said bidder, for said last mentioned sum of money, the premises lastly herein described, which are situated in the city of Chicago, county of Cook and state of Illinois, and described as follows, to-wit:

The north twenty (20) feet of the south sixty (60) feet of lot four (4) in block sixteen (16) in Bushnell's addition to Chicago, according to the plat of the subdivision of said block, which was recorded in the office of the recorder of deeds of Cook county, in book 165 of maps, page 51, with the buildings thereon and the appurtenances thereto.

The amount realized from the sale of said premises was in the aggregate the sum of twelve thousand nine hundred and eighty-seven dollars and ninety-two cents ($12,987.92).

Of said aggregate sum, I have disbursed and retained as follows:

| | |
|---|---|
| Paid assignee of petitioners and intervening petitioners amount due under said decree, including interest thereon, at 6 per cent, from July 20, 1874..... | $12,756 42 |
| Paid court costs as per "Exhibit B"..... | 6 00 |
| Paid Chicago *Daily News* for advertising sale..... | 27 50 |
| Retained my fees, disbursements and commissions..... | 198 00 |
| Total amount of sale..... | $12,987 92 |

The vouchers for said payments are hereto attached, marked "Exhibits A, B and C."

I have executed and delivered to Hiram H. Thomas, purchaser at said sale, the certificates of sale directed by said decree and by law to be executed; and have filed in the office of the recorder of deeds of said Cook County duplicates of said certificates.

In conclusion, I report that the proceeds of said sale were sufficient to pay the amount found due, principal and interest and costs and expenses of sale.

All of which is respectfully submitted.

Dated this 15th day of July, A. D. 1881.

THOMAS G. WINDES,

*Master in Chancery of the Circuit Court of Cook County, Illinois.*

("Exhibits A, B and C," are omitted.)

The following is "Exhibit E":

Know all men by these presents, that we, Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, all of Cook county and state of Illinois, for and in consideration of one dollar and other good and valuable consideration, do hereby sell,

assign and set over to the Franklin Savings Bank, of Pawtucket, R. I., a corporation, etc., all our and each of our right, title and interest in and to a certain decree, made and entered of record, on the 20th day of July, A. D. 1874, in the Circuit Court of Cook county, Illinois, in a certain cause lately pending in said court, on the common law side thereof between us, the said Henry Gilsdorff, Frederick and Edward Baumann and James Sullivan, plaintiffs, and Frank C. Taylor, Maria L. Taylor, Ira Scott and others, defendants, hereby conferring on said Franklin Savings Bank, of Pawtucket, the right to take all legal measures to enforce said decree.

Witness our hands and seals this 19th day of March, A. D. 1875.

FREDERICK BAUMANN, [SEAL]
EDWARD BAUMANN, [SEAL]
HENRY GILSDORFF, [SEAL]
JAMES B. SULLIVAN. [SEAL]

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 7," supplemental bill in case of *Franklin Savings Bank* v. *Frank C. Taylor, et al.*, filed December 10, 1878, which is as follows:

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. } ss.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

The Franklin Savings Bank of Pawtucket, Rhode Island, a corporation organized and existing under and by virtue of the laws of the state of Rhode Island, and a citizen of said last mentioned state, and having its principle place of business at Pawtucket in said state, brings this its supplemental bill of complaint against Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Charles H. Mulliken, trustee, Edward W. Russell, successor in trust, George S. Carmichael, Harrtet K. Carmichael, James C. Grant, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased; M. C. Baldwin and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar.

deceased; The Gower Marble Company and Ellis S. Chesborough Jr., Assignee in bankruptcy of said Frank C. Taylor, who are citizens of the state of Illinois and residents of said district, and also against the State Bank of Nebraska, a banking corporation having its principal place of business in and being a citizen of the state of Nebraska.

And thereupon your orator complains and says that upon the 26th day of June, 1872, the defendant, Frank C. Taylor applied to your orator for a loan of $30,000 for one year, with interest at the rate of ten per cent. per annum payable semi-annually, and as security for said loan offered land as follows, to wit: one hundred and four (104) feet fronting west on North Dearborn street to a depth of 150 feet on Maple Street to a 16 foot alley, said land being described as lot 4, of block 16, in Bushnell's addition to Chicago in said Northern district of Illinois, and represented to your orator that said land, without any improvements, then had a cash value of not less than $35,000, and that improvements thereon to consist of five stone front dwelling houses were to be constructed thereon during that year at a cost of not less than $45,000, and that the market value in cash of such improvements would not be less than $45,000, and that the total market value in cash of such land and improvements would not be less than $90,000, and the said Frank C. Taylor, in making such application requested that he might have the privilege of taking said sum as he should need it for making such improvements, and the further privilege of paying said loan at any time within the term, interest to be charged only for the time that he should use the money.

And your orator further shows that in pursuance of such application your orator did loan to said Taylor said sum of $30,000, and to evidence the same the said Taylor made his promissory note for $30,000 dated June 26, 1872, payable to the order of George W. Newell, treasurer (he then being treasurer of your orator) at the office of your orator in said Pawtucket, and to secure the payment of said note, the said Frank C. Taylor and his wife, the defendant, Maria L. Taylor, executed a trust deed to Edward Brown conveying the premises above described, by the following description: "That part of block 16 in Bushnell's addition to Chicago in Cook county, Illinois, bounded and described as follows, to-wit: beginning at a point on the west line of Dearborn street 300 feet north of the southwest corner of said block, thence running north on the east line of Dearborn street 103 feet more or less to the northwest corner of said block; thence east on the south line of Maple street 150 feet to an alley: thence south parallel with Dearborn street 103 feet more or less; thence west parallel with Maple street 150 feet to the place of beginning," the same being lot 4 of block 16, in Bushnell's addition to Chicago, which trust deed was duly acknowledged and recorded in recorder's office in and for said Cook county upon July 9, 1872, in book 111, on page 272.

Your orator further shows that at the time of making said application and said loan your orator was engaged in the banking business at Pawtucket aforesaid, and the said Frank C. Taylor was engaged in the banking business in the said city of Chicago, he being the vice

president of the Fourth National Bank in said Chicago. That your orator had made a few and only a few loans in said Chicago, and said Taylor had placed all the same as the agent of said orator, and had attended to the securities for said loans. That your orator had no knowledge of the manner of doing such business in Chicago, but had entire confidence in the ability and integrity of said Taylor, and left to him all matters connected with the security for loans made through him as such agent. That it was the usual course of business between your orator and said Taylor in making said loans for said Taylor to draw on your orator for the amount of a loan after the application for such loan had been accepted, and after such draft had been paid by your orator then to send to your orator the notes for such loan and the trust deed or mortgage securing the same. That said Taylor sometimes sent to your orator with such notes and trust deed or mortgage an opinion of title made by some lawyer in Chicago, employed by said Taylor, but your orator did not employ any lawyer to examine the titles on such, and did not know that it was usual in making such loans in Chicago, to have the opinion of some attorney on the title of the security. That said Taylor never sent to your orator an abstract of title in connection with any such loan, and your orator did not know that any such thing was used in making such loans, the same not being in use in the state of Rhode Island, and your orator having had no experience with the same. That your orator implicitly trusted to said Taylor to furnish to your orator securities for its loans which should be prepared and vouched for in accordance with the usual course of such business in Chicago, and that said Taylor would see to it that your orator's loans were made on property of sufficient value, and that the trust deeds or mortgages given to secure the same conveyed as security for such loans the fee simple absolute of the premises on which such loans were made, and your orator believed, as it still does believe that said Taylor was sufficiently familiar with the manner of doing such business in Chicago to properly protect the interests of your orator in such loans, and see that it had proper securities as aforesaid. And your orator, relying entirely on the integrity and ability of said Taylor, was accustomed to receive from said Taylor such securities as he forwarded for loans made for your orator without questioning their regularity or sufficiency.

And your orator further shows that after the application of said Taylor for said loan of $30,000 was accepted by your orator said Taylor forwarded to your orator his note for said sum, and subsequently the trust deed securing the same, and received said sum of money at several different times, as he called for the same, receiving a part thereof before said trust deed was forwarded to your orator. Said Taylor did not forward to your orator any abstract of title nor any opinion upon the title of said real estate, but the whole business of such loan was conducted between your orator and the said Taylor in the manner usual between them in such matters, and your orator relying entirely upon the integrity and ability of said Taylor as they had done in all such matters, received from him said trust deed and

note, believing that said trustee deed conveyed for the purpose of securing said note, the fee simple absolute to the premises described therein, and that everything has been done by said Taylor to properly protect the interests of your orator, and there was nothing in said transaction to excite the suspicion of your orator or shake its confidence in said Taylor.

Your orator further shows that the said Frank C. Taylor after the making of said loan, proceeded to improve the aforesaid premises by erecting thereon five stone front dwelling houses, each three stories and basement in height, and in making the improvements used the money loaned to him by your orator as aforesaid, and said improvements were made and completed at an expense of more than $53,000.

Your orator further shows that upon the 13th day of June, 1873, your orator, still being in the banking business at Pawtucket, Rhode Island, as aforesaid, and the said Frank C. Taylor still being the agent for your orator at Chicago, as aforesaid, and still having the entire confidence of your orator, applied to your orator for a loan of $36,000 for five years, with interest at the rate of nine per cent. per annum, payable semi-annually, such loan to be substituted for the aforesaid loan of $30,000, which was to become due on the 27th of June, 1873, with accrued interest thereon, and to be secured upon a portion of the above described premises, namely: upon that portion of said premises described as follows: the 84 feet thereof on the southeast corner of Dearborn and Maple streets with a depth of 150 feet to a sixteen foot alley.

And your orator further shows that said Taylor in making said application represented to your orator that the improvements upon said premises consisted of four stone and brick residences, each three story and basement, and that said premises with said improvements had at that time a market value in cash of not less than $68,000, and that the same were occupied as residences at a rental of $6,500 per annum, and the said Taylor requested your orator to divide said loan into four mortgages of $9,000 each.

And your orator further showeth that in accordance with the request of said Frank C. Taylor your orator did substitute for said loan of $30,000, which was to mature as aforesaid, a loan for five years, of $36,000, and did remit to said Taylor in accordance with his request the difference between the amount due upon said former loan of $30,000 and the said loan of $36,000, the amount of said new loan, and the said Frank C. Taylor did forward to your orator to evidence such new loan of $36,000 four notes each for the sum of $9,000, dated August 23, 1873, and payable five years after its date to the order of your orator, with interest at the rate of nine and a half per cent. per annum payable semi-annually. Also with each of said notes ten coupons or interest notes bearing the same date, payable to the same order, and evidencing the interest upon said principal notes at the rate aforesaid until the maturity thereof, all which notes, both for principal and interest, were sighed by the said Frank C. Taylor, the said Maria L. Taylor, his wife, and by Charles H. Mulliken, trustee,

and as for security for said principal and interest notes said Taylor also forwarded to your orator four deeds of trust, one to secure each of said prinpical notes with the coupon or interest notes belonging thereto, all bearing date August 23, 1873, all executed by the said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, one conveying lot one in the subdivision of lot four, in block sixteen of Bushnell's addition aforesaid, recorded in the recorder's office of said Cook county in book of records number 303 upon page 227, another coveying lot two in the subdivision aforesaid, and duly recorded in said recorder's office in book 306 of records upon page 207; and another conveying lot four in the subdivision aforesaid, and duly recorded in said recorder's office in book 242 of records upon page 614; and another conveying lot five in the aforesaid subdivision, and recorded in the recorder's office aforesaid in book 242 of records upon page 609; all of which notes and trust deeds are particularly described in your orator's original bill of complaint heretofore filed in this cause upon the 28th day of June, 1876.

Your orator further shows that to excuse the delay in executing said last mentioned notes and trust deed, after the application of said Frank C. Taylor had been accepted by your orator said Taylor represented to your orator that said Mulliken was trustee for the wife of said Taylor; that he wanted said trustee to sign said notes as well as his wife, and that to accomplish this it had been necessary to obtain an order from the court instructing said trustee so to do; and your orator still having complete confidence in said Taylor and believing from his representations that said Taylor was taking extraordinary pains to properly execute for your orator the securities necessary for said loan of $36,000, made no inquiry into the terms of the trust to said Mulliken, but accepted from said Taylor the securities sent by him as aforesaid without question, believing that said trust deeds had conveyed to the trustee therein named the fee simple to all the premises in said trust deed described to secure the several notes aforesaid with interest thereon according to their tenor.

Your orator further shows that all of said sum of $36,000 loaned by your orator as aforesaid was actually used in erecting the five dwelling houses upon the premises described in said first mentioned trust deed to Edward Brown.

And your orator further shows that after the execution and delivery of said four notes for 9,000 each, and the trust deeds securing the same, said first mentioned note of $30,000 and the trust deed securing the same were cancelled and surrendered to said Frank C. Taylor by your orator and said trust deed was released of record.

Your orator further sliowcth that afterwards, and upon the 1st day of January, 1874, said Frank C. Taylor gave to your orator a certain other promissory note for the sum of $2,875 made by said Frank C. Taylor, dated January 1, 1874, and payable to the order of your orator two years after that date with interest at the rate of ten per cent. per annum, payable semi-annually, and to evidence said interest also gave to your orator four coupon notes bearing the same date, payable to

the same order, and executed by said Frank C. Taylor, and did also give to your orator to secure said principal note, and said interest notes or coupons, a certain deed of trust also bearing date January 1, 1874, executed by said Frank C. Taylor, by said Maria L. Taylor, his wife and by Charles H. Mulliken, trustee, which trust deed conveyed to Francis S. Howe lots 1, 2, 4 and 5 aforesaid, and was duly acknowledged and recorded in said recorder's office in book 338 of records, upon page 159, which said trust deed and the notes secured thereby are fully described in your orator's aforesaid original bill of complaint.

And your orator further shows that upon the 28th day of June, 1876, it filed its original bill of complaint in this cause to foreclose said five trust deeds, because of the failure to pay interest coupons secured by each and all of said trust deeds as is particularly set forth in said bill of complaint, and said cause has been put at issue and referred to the master in chancery of this Honorable court.

Your orator further showeth that on the 30th day of January, 1873, the said Frank C. Taylor and Maria L. Taylor, his wife, filed in the Superior court of said Cook county upon the chancery side thereof a bill under that statute of said state of Illinois usually known as "The Burnt Records Act," in which the complainants therein set up that the said Maria L. Taylor upon the 13th day of June, 1871, was seized and possessed in fee simple absolute of the premises herein before first described, set up the matter in which she acquired such title, and that upon the 13th day of June, 1871, the complainants in said bill did jointly make, execute, and deliver to Ira Scott, of the said city of Chicago, in said Cook county a certain deed of trust, a substantial copy of which, as said complainants in said bill declare, is attached to said bill as Exhibit A, and made a part of said bill, the said bill of complaint further sets up that said premises were subject at the time of the filing of said bill to the trust deed to Edward Brown for the use of your orator herein, as hereinbefore set forth; that Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor were at the time of filing said bill the sole surviving children of the said complainants in said bill, and alone interested in the trust created by the conveyance to Ira Scott, as aforesaid; that by the terms of said trust deed to Ira Scott, Francis B. Peabody of said city of Chicago was appointed and made successor in trust to act in the event of the death, inability or refusal to act or removal from the state of said Scott; that said deed of trust further provided that in case of death, inability or refusal to act, or removal from the state of said Scott and Peabody, then upon the application of one or more of the *cestuis que trust* being made to any court of record of said Cook county, such court might appoint a successor in trust to act; that said deed of trust was duly acknowledged and recorded in the office of the recorder of deeds for said Cook county upon the 15th day of June, 1871, in book 673 of deeds at page 1, and that said trust deed and said record thereof were destroyed in the great fire of Chicago upon the 8th and 9th of October, 1871, and said bill of complaint prayed said court to establish and confirm said deed of trust, and the title and the interest of the

petitioners in said bill and of all others interested thereunder in and to said premises.

Your orator further showeth that said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown and your orator were amongst others made parties defendant to said bill, and said bill was duly sworn to by the said Frank C. Taylor in the usual form; that a guardian *ad litem* for said Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, who by said bill of complaint were alleged to be minors, was duly appointed, and an answer for said minor defendants duly filed by said guardian in the usual form.

Your orator further shows that no personal service was had upon your orator as party defendant to said bill of complaint, nor did your orator have any notice of the proceedings thereunder until long subsequent to the filing of its original bill herein; but upon March 5, 1873, your orator with all the other defendants to said suit, not minors as aforesaid, were defaulted, service upon your orator having been made by publication under the statute of said state of Illinois; that upon March 6, 1873, said cause was referred to a master in chancery of said court; that among other witnesses the defendant Frank C. Taylor appeared before said master in chancery, and made oath that Exhibit A attached to said bill of complaint was, in substance, a correct copy of the original deed in trust made by himself and his said wife to Ira Scott as aforesaid, and that said original deed was, as he believed, destroyed in said fire of October 9, 1871, and such further proceedings were had in said cause that upon the 28th day of March, 1873, a decree was rendered therein by the said Superior court of Cook county, by which, among other things, said court found that upon April 19, 1871, the said Maria L. Taylor, one of the complainants in said bill, was seized and possessed of said premises first hereinbefore described as of an absolute estate, in fee simple, that being so seized and possessed of said premises first hereinbefore described, the said Maria L. Taylor and the said Frank C. Taylor, her husband, did on the 13th day of June, 1871, execute and deliver to said Ira Scott a certain deed of trust, duly acknowledged and recorded as was in said bill of complaint alleged, and that said Exhibit A, attached to said bill of complaint, was a true and substantial copy of said original deed of trust, and that said Ira Scott was at the time of rendering such decree seized and possessed of said premises, as of an estate, in fee simple absolute, subject to the trusts and conditions set forth and contained in said Exhibit A. And did further adjudge and decree by said decree the said complainants in said bill; and the said Frank C. Taylor, Jr., Maria Louise Taylor, and Josephine S. Taylor, were at the time ot the rendering of said decree alone interested in the said trust, and in said premises, and that their respective interests therein were defined by said Exhibit A. And that they, said complainants, and said defendants, at that time held their said interests under and in accordance with the terms and provisions of said deed of trust to Ira Scott, as set forth in said Exhibit A, restored and established by said decree, and said court did fur-

ther order and adjudge by said decree that the interests and rights of your orator and the said Edward Brown, trustee for the use of your orator, should not be in any wise affected by said decree.

Your orator further showeth that said court in ordering and decreeing that Exhibit A, attached to said bill of complaint was a true copy in substance of said original deed in trust to Ira Scott, did set forth in full said Exhibit A, and your orator attaches to this, its supplemental bill of complaint, a copy of said decree marked Exhibit A, containing in full said deed of trust as restored and established by said decree, and begs leave to refer to the same as a part of this bill of complaint.

Your orator further shows that upon the 23d day of July, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, filed their other certain bill of complaint, in which they set up the ownership of said Maria L. Taylor to the aforesaid premises, the making of said trust deed to Ira Scott, and the records thereof, substantially as the same were alleged in their bill of complaint hereintofore mentioned, and to which last mentioned bill they attach and make a part thereof, as an exhibit, an instrument identical with that attached as an exhibit to their aforementioned bill, and which they again aver to be a substantial copy of the original trust deed made by them to Ira Scott as aforesaid. Said complainants in said last mentioned bill further allege that by the terms and provisions of the said trust deed to Ira Scott, made by them as aforesaid, it was amongst other things provided that said Scott and his successors in trust might build upon and improve said premises or any part of the same, for the purpose of deriving a revenue therefrom, and might borrow money for the purpose of making such improvements, and secure the payment of the same by executing on said premises or any portion thereof, mortgages or trust deeds, and also might sell a portion of said premises for the purpose of raising funds to improve said trust estate. And further allege that up to the time of the great fire of October 8 and 9, 1871, said premises had been occupied by the complainants in said bill as a homestead; that the improvements thereon, consisting at the time of said fire of a residence and out-buildings, were totally destroyed by said fire, that said complainants were by such destruction left without a home, and suffered in consequence of such fire other large pecuniary losses, so that they were unable, suitably, to provide for their necessary wants, and those of their children, and pay the taxes and assessments laid on said premises without in some way making said trust estate available as a source of revenue; and further allege that said premises were situated in a portion of Chicago that had been prior to said fire and still continued to be valuable for residence purposes. And that the best judgment of said complainants demanded that said premises should be improved by the erection thereon of a block of five first-class residences; that inasmuch as said original deed of trust and all copies and records thereof had been destroyed by said fire, said Scott declined, though requested by said complainants, either to sell any portion of said premises or to borrow

the necessary funds for the said improvements, or to execute a mortgage to secure any such loan until the terms of said trust should be fully restored by the decree of some court having competent jurisdiction of such matters, and further allege that the delay necessary to procure a decree establishing the terms of said trust would have operated greatly to the prejudice and damage of said trust estate, that therefore to protect and preserve said trust estate, said Frank C. Taylor, as the agent of his wife, said Maria L. Taylor, and at her request, borrowed a large sum of money and with the same erected on said premises for the benefit of said trust estate a block of five fine marble front residences, one of which said complainants were at the time of filing said last mentioned bill occupying with their families as a homestead under the terms of said trust; and the said complainants in the said last mentioned bill further allege therein that said improvements were a wise and judicious improvement of said trust estate, and that in making the same they had laid out and expended on such premises for the benefit of said trust estate the sum of $53,700, for which they held on account of said trust estate the usual and proper vouchers; and further allege the rendering of the decree upon the first mentioned bill filed by them as aforesaid, establishing the terms of said trust deed as identical with Exhibit A, attached by them to both of said bills as aforesaid, and that in and by said deed of trust it was provided that any court of said Cook county might, in case of the refusal to act of the trustees and successor in trust in said instrument named, appoint a successor in trust to be vested with all the powers and subject to all the limitations conferred and imposed upon the said Ira Scott by the aforesaid instrument; and further allege that the said Ira Scott, the trustee named in said trust deed, and the said Francis B. Peabody, the successor in trust therein named, had both resigned; and said complainants in said last mentioned bill prayed that said Superior court of Cook county proceed to appoint a successor in trust to said Scott and Peabody under said deed of trust, and that said court should ascertain and determine by a full and proper accounting, the value and cost of the improvement made upon said premises by the said complainants, and that said trustee to be appointed by said court should be authorized from the sale of said premises or from any loans made for that purpose to pay and discharge all claims of any persons against said trust estate on account of said improvements not exceeding the fair value and cost of such improvements as found by said court.

And your orator further showeth that said last mentioned bill of complaint was duly sworn to by said Frank C. Taylor, one of the complainants therein; that since the filing of the first mentioned bill of complaint by said Frank C. and Maria L. Taylor, another child named Alexander Taylor had been born to them, and that said Alexander Taylor, together with said Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, and Josephine S. Taylor were made defendants, and were the only defendants to said last mentioned bill of complaint.

Your orator further showeth that all of the defendants to said last mentioned bill of complaint, except said Scott and said Peabody, were minors; that a guardian *ad litem* was duly appointed for said minors, and an answer filed by him in the usual form, submitting the rights of said minors to the protection of said court; that upon August 6, 1873, said Scott and Peabody were defaulted, and reference of said cause was made to a master in chancery of said court; that upon the 19th day of August, 1873, the report of said master was duly filed in said cause, and upon the same day a decree was rendered by said court in said cause, in which, among other things, said court decrees that Exhibit A attached to said bill of complaint last mentioned is a correct copy of the original deed of trust to said Ira Scott; that by the terms of said deed of trust said Scott and his successors in trust were authorized and empowered to build upon and improve the premises conveyed thereby, or any part of the same for the purpose of deriving a revenue therefrom, and to borrow money for the purpose of making such improvements, and to secure the payment of the same by executing on said premises or any portion thereof mortgages or deeds of trust; and further that said Scott and his successors in trust were by said deed of trust authorized to sell a portion of the premises for the purpose of raising funds to improve said trust estate; and said court did by said decree further find that said Frank C. Taylor and Maria L. Taylor were losers to such an extent by said great Chicago fire that they could not suitably provide for their necessary wants and those of their children and pay the taxes laid and assessed on said premises without in some way making said trust estate available as a source of revenue; that said premises were situated in a portion of said city of Chicago that had been and continued to be valuable for residence purposes, and that good, careful, and judicious management of said trust estate for the best interests of all concerned therein required that said premises should be improved by the erection thereon of a block of five first-class residences; and that by the said fire the said trust conveyance to Ira Scott and all the public records of the same were totally destroyed; that no copy of said trust conveyance was preserved; that the abstracts, minutes, copies of abstracts and records of same concerning said trust conveyance which were preserved from said fire were very meagre, and only showed the trust conveyance by giving the names of said Frank C. Taylor and Maria L. Taylor as grantors and said Ira Scott as grantee, the description of the property conveyed, date of the conveyance, the date, book, and page of the record thereof, and only described said conveyance as a deed of trust, there being no reference whatever to the terms of such trust; and said court did by said decree further find that to protect and preserve said trust estate, and for the best interests of all concerned the said Frank C. Taylor, as the agent of his wife, said Maria L. Taylor, and at her request had borrowed a large sum of money, and with the same erected on said premises for the benefit of said trust estate a block of five marble front residences, and that said improvements were a wise and judicious improvement of said trust

estate; and the said Maria L. Taylor through said Frank C. Taylor as her agent had laid out and expended in making said improvements the sum of $53,700, and that said sum was judiciously and wisely expended, and that said improvements were fairly worth said sum; and said court did further by said decree order that Charles H. Mulliken, of said city of Chicago, be and was by said decree appointed as successor in trust of said Ira Scott and Francis B. Peabody under said trust conveyance to said Scott and Peabody. And in accordance with the terms thereof for the uses and purposes therein expressed; and said court did by said decree authorize and empower said Mulliken, as such trustee thereby appointed out of any funds raised from the sale of said premises or from any part thereof, or from any loan made for that purpose to pay and discharge to the said Frank C. Taylor and Maria L. Taylor all the cost of said improvements so as aforesaid advanced and pay by them or either of them, not to exceed in amount the sum of $53,700.

All which matters are fully set forth in said decree, a copy of which your orator attaches as Exhibit B, and prays leave to refer to the same as a part of this its supplemental bill.

Your orator further shows that it had no knowledge or notice of the filing of either of said bills of complaint, or of any of the proceedings under them or either of them, until long subsequent to the filing of its original bill of complaint herein, and of issue joined thereon and reference to the master of this court.

Your orator further shows that the premises first hereinbefore described are the same as described in and conveyed by the said deed of trust from the defendants Frank C. and Maria L. Taylor to Ira Scott; that said premises were purchased by the said Frank C. Taylor and paid for by him with his own means; that the conveyance of the same to Maria L. Taylor was made without any consideration paid from the said Maria L. Taylor and wholly for the consideration paid by the said Frank C. Taylor, and that said premises were conveyed by the said Frank C. Taylor and Maria L. Taylor to the said Ira Scott in trust without any consideration from either of the *cestuis que* trust in said trust deed mentioned; that said premises were, up to the time of said fire occupied by the said Frank C. Taylor and Maria L. Taylor, with their children as a family homestead, and the said Frank C. Taylor paid the taxes thereon, and no money was received by the said trustee, Ira Scott, and none was disbursed by him, and said premises were cared for in all respects by the said Frank C. Taylor as if the title to the same were in him, instead of being held by the said Ira Scott in trust as aforesaid.

Your orator further shows that the said Frank C. Taylor, Maria L. Taylor, and their children, the minor defendants to your orator's original and supplemental bill herein, now constitute and always have constituted one family; that the said Charles H. Mulliken at the time he was appointed trustee as aforesaid, held some office, the appointment of which was controlled by the said Frank C. Taylor, and the said Frank C. Taylor continued after the appointment of said Mulli-

ken to manage and control all of said property up to the time of said filing of your author's original bill herein; as if the same were his own, leasing parts of the same, receiving the rents therefor and mingling the same with his own moneys received from other sources, and in all respects said trust estate was treated by the said Frank C. Taylor as if the title thereof was held by him free and discharged from all trust and conditions.

Your orator further shows that the averments in said last mentioned bill of complaint filed in the Superior court by said Frank C. and Maria L. Taylor, to the effect that the said Frank C. Taylor, as the agent of said Maria L. Taylor, to protect and preserve said trust estate was obliged to borrow and did borrow a large sum of money for the improvement of said trust estate, refer to them loan of $30,000 made by your orator to said Frank C. Taylor, and secured by trust deed to Edward Brown, as hereinbefore recited; but your orator had no knowledge, until it learned the same from the said bill of complaint, that the said Ira Scott had declined to join in the security for said loan, but always supposed while it held such security that the same was a first lien upon said premises and that the trust deed to the said Brown for the use of your orator conveyed to the said Brown in fee simple absolute the title to the premises therein described for the uses therein expressed.

Your orator further showeth that the improvements made by the said Frank C. Taylor and Maria L. Taylor immediately after the great fire aforesaid, namely: the erection of the five stone front residences now standing upon said premises was a wise and judicious improvement, and was, as they have in their bill of complaint alleged, necessary for the protection and preservation of said trust estate, and said improvements cost, and were fairly worth much more than the whole amount of $36,000 loaned by your orator for the purpose of erecting the same.

Your orator further showeth that it is true, as alleged by said Frank C. and Maria L. Taylor in their last mentioned bill of complaint, and as found by the decree rendered therein, that the record of said original trust deed to Ira Scott was destroyed in the great fire of Chicago upon the 8th and 9th of October, 1871, and that the abstract books preserved from the said fire showed nothing of the terms of said trust; but your orator had no knowledge of any conveyance in trust to said Scott until after the filing of its original bill of complaint herein, and the only information possessed by your orator of any trust was that conveyed by said Frank C. Taylor, as aforesaid, after the decree rendered upon the last mentioned bill, that Charles H. Mulliken held his wife's property as trustee; and such complete confidence did your orator then have in said Taylor, that no inquiry or investigation was made by it as to the terms of said trust, but your orator believed, as said Frank C. Taylor led it to believe, that by the joining of the said Mulliken with said Frank C. Taylor and the said Maria L. Taylor in the execution of the aforesaid trust deeds and notes to your orator a title in fee simple absolute had been conveyed

for the use of your orator to secure said notes upon the terms in said trust deeds mentioned.

Your orator further showeth that since the filing of its original bill herein, and since issue joined thereon and reference to the master as aforesaid another child has been born to the said Frank C. and Maria L. Taylor named Robert C. Taylor, and that said child at his birth became one of the *cestuis que trust* under said trust deed to Ira Scott and is interested in the premises conveyed by the five trust deeds which your orator seeks to foreclose by its original bill of complaint herein, and is a necessary party to any proceedings for properly and equitably adjusting the rights of your orator in said premises.

Your orator further showeth that since the filing of its original bill herein, and since issue joined thereon, and reference to the master as aforesaid, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, by Orville Peckham as their next friend, have filed a bill of review in the Superior court of said Cook county in the cause hereinbefore first mentioned as originally instituted in said court by said Frank C. Taylor and Maria L. Taylor his wife, and have made defendants thereto said Frank C. Taylor, Maria L. Taylor, Alexander Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Francis S. Howe, Edward W. Russell and your orator; and in the other of said causes in said Superior court said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor have filed a bill of review by said Peckham, as their next friend, to which the same parties, except said Alexander Taylor, are made defendants as in said last mentioned bill of review.

Your orator further shows that in and by each of said bills of review the complainant therein set up, among other things, that since the rendering of the decrees in said causes the original deed of trust from said Frank C. Taylor and Maria L. Taylor to said Ira Scott has been found; that the same is now in their possession or the possession of their next friend, said Peckham; that said alleged original deed of trust is materially different in its terms from said instrument as restored and established by the decrees rendered by said court in said causes, and that the rights of the complainants in said bills of review are much more valuable under the terms of said original deed than under the terms of the deed restored and established by said decrees; and in one of said bills of review the complaints allege that by said original deed of trust it was expressly provided that no charge, lien, or incumbrance should be created upon the premises conveyed thereby for the purpose of building thereon; and to both of said bills of review the complaints attach an exhibit which they allege is a true copy of said original deed in trust, and which they make a part of their said bill of review.

Your orator further showeth that the complainants in said bills of review, together with said infant Robert C. Taylor, whom they have made a party defendant to both of said bills, are children of said Frank C. Taylor and Maria L. Taylor, his wife, and they constitute one family, said children having no guardians for their persons or

estate, and being entirely under the direction, government, and control of their said parents, and neither of said children has arrived at the years of discretion or at a sufficient age to take any important step independent of the advice and direction of said parents, and your orator charges the fact to be that said bills of review, though filed in the names of certain said children are directed and controlled by said Frank C. and Maria L. Taylor, and were designed by them a means to avoid the payment of their honest indebtedness to your orator, and to defeat your orator, if possible, in collecting such indebtedness by the foreclosure of the trust deeds described in its original bill of complaint herein.

Your orator further shows that some person acting for said minors has caused said alleged original deed of trust to be recorded in the recorder's office in and for said Cook county since the filing of your orator's original bill herein, and under the terms of said instrument as shown by said record and also by the exhibits attached to said bills of review said Frank C. Taylor and Maria L. his wife, have a large interest in the premises described in and conveyed by said trust deeds for the use of your orator, and it also appears from said record and said exhibit that said alleged original trust deed to Ira Scott provides that said Ira Scott or his successors in trust shall bargain, sell, and convey a portion of the premises conveyed thereby for the purpose of procuring funds to build upon and improve the remainder thereof during the joint lives of said Frank C. and Maria L. Taylor, and upon their joint written request to be signified by their joining with such trustee in the execution of the conveyance of that part of the premises so sold, a copy of which alleged original deed of trust as shown by said record and said exhibit your orator attaches as Exhibit C to this, its supplemental bill and prays that it may be considered a part thereof.

Your orator further showeth that the second bill of complaint filed by said Frank C. and Maria L. Taylor in the Superior court as aforesaid was filed for the express purpose of obtaining a decree under which the premises conveyed to said Ira Scott, as aforesaid, could be made to pay for the improvements which had been made thereon, and especially for the purpose of providing a way to secure or pay the sum of money which your orator had advanced to said Frank C. Taylor to assist in making said improvements, and the decree entered in said cause authorizing and empowering said Mulliken, who by said decree was appointed trustee, to pay from any funds arising from the sale of said premises or any part thereof or from any loan made for that purpose to pay said Frank C. and Maria L. Taylor all the costs of said improvements advanced by them was designed to empower said Mulliken to secure the loan of $36,000 for which said Frank C. Taylor had already applied to your orator as aforesaid, and which loan was chiefly to be used in paying the $30,000 which said Frank C. Taylor had borrowed of your orator as aforesaid, and accrued interest thereon, which last mentioned loan, was, at the time of the entering of said decree, overdue and unpaid.

Your orator further shows that after the rendering of said last mentioned decree said Mulliken in pursuance thereof, the said Frank C. and Maria L. Taylor joining with him, did execute the four trust deeds for $9,000 each described in your orator's original bill herein, and said Mulliken and Taylor did also in pursuance of said decree sell and convey one of the houses erected on said premises with the land appurtenant thereto for the purpose of paying the balance of the cost of said improvements over and above said sum of $36,000 loaned by your orator as aforesaid; and your orator avers that if it had then appeared that by the terms of said original trust deed to Ira Scott a part of said premises should be sold for the improvement of the balance thereof, but that the same could not be charged with any incumbrance it would have been decreed in said cause that said Mulliken should sell so much of said premises as should be necessary to pay the whole cost of said improvements, and at that time such cost could have been wholly defrayed by the sale of a part of said premises, so improved as aforesaid.

Your orator further shows that said Frank C. and Maria L. Taylor, the grantors in said original trust deed to Ira Scott, are both living and both joined with said Mulliken in executing the trust deeds which your orator is seeking to foreclose by its original bill herein, the said Mulliken executing the same as trustee, and said trust deeds all contain powers of sale authorizing the trustee therein named or his successors in trust therein named to sell said premises thereby conveyed for payment of the indebtedness thereby secured, if any default shall be made in paying the same or the interest thereon.

Your orator further shows that since the filing of its original bill herein, and issue joined thereon and reference to the master as aforesaid the defendant Francis S. Howe, the trustee in said five trust deeds which your orator by its original bill seeks to foreclose has died, and the title which by said trust deeds was conveyed to said Howe for the use of your orator upon the trusts in said trust deeds set forth has become vested in the defendant Edward W. Russell, who is the successor in trust in said trust deeds, and is now held by said Russell for the use of your orator upon the terms and conditions of said trust deeds.

Your orator further shows that since the filing of its original bill herein it has paid a large sum of money for taxes upon the premises conveyed by said trust deeds to protect the lien of said trust deeds and prevent the sale of said premises for the non payment of said taxes; that on or about August 26, 1876, it paid for this purpose the sum of $1,015.34 and on or about September 11, 1876, the further sum of $85.73.

Your orator further shows that since the filing of the original bill herein, John Price, one of the defendants to said original bill has died, but your orator is informed and charges the fact to be that all the claim of said Price in and to the premises described hereinbefore and in said original bill is alleged claim to a mechanic's lien on the part of the firm of Grant & Price, or J. Price & Co., of which firm said Price was one member and the defendant James C. Grant, who

is still living was the other member, and your orator avers that the claim of said Price is now vested solely in the said Grant or in the defendant M. C. Baldwin, to which last named defendant an assignment of said claim has been made, as your orator has been informed, but whatever claim or right said Price held in or to said premises he held and said Grant or Baldwin now holds subject to the lien of the trust deeds described in said original bill, and to the rights of your orator thereunder.

Your orator further shows that after the filing of your orator's original bill herein William H. Bradley, Esq., was duly appointed by this court guardian *ad litem* of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, and Alexander Taylor, the infant defendants to said original bill, and said Bradley as such guardian *ad litem* duly filed for said infant defendants an answer to said bill, and subsequently and after your orator had filed its replication to said answer, Orville Peckham was by an order of this court substituted in the place of said Bradley as guardian *ad litem* for said above named infant defendants, and said Peckham as such guardian *ad litem* has, on behalf of said infant defendants, filed an amended answer to your orator's said original bill of complaint herein.

Your orator further shows that besides the infant defendants who have answered said original bill by their guardian *ad litem* as aforesaid, the defendants Grant, Price, Baldwin, Mulliken, Maria L. Taylor, and the Gowen Marble Company have all answered said original bill, and issues have been joined on all said answers, and the cause referred to Henry W. Bishop, Esq., master in chancery of this Honorable court, and testimony has been introduced before said master both on behalf of your orator and on behalf of said defendants who have answered as aforesaid, and said cause is still pending upon such reference to said master.

To the end, therefore, that the said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, Charles H. Mulliken, trustee, Edward W. Russell, successor in trust, George S. Carmichael, Harriet K. Carmichael, James C. Grant, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased; M. C. Baldwin and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar, deceased; The Gowen Marble company, Ellis S. Cheseborough, Jr., assignee in bankruptcy of the said Frank C. Taylor, and the State Bank of Nebraska, may, if they can show why your orator should not have the relief in its said original and supplemental bill prayed, and may full, true, direct and perfect answer, make (but not under oath, answers under oath being expressly waived), to all and singular the matters and things set forth in this, its supplemental bill as fully and particularly as if the same were hereinafter repeated, and that the said Robert C. Taylor, may also, full, true and perfect answer make (but not under oath, answer under oath being

expressly waived) to all and singular the matters set forth in said original bill as fully and particularly as if the same were hereinafter repeated:

That an account may be taken under the direction of this Honorable court of what is due and owing to your orator for principal and interest on said notes and coupons described in said original bill, and an account of taxes paid by your orator as aforesaid, and that said defendants may be decreed to pay your orator what may be found due to it on taking such account, together with the costs of this suit by a short day to be appointed by this Honorable court for that purpose; or that in default thereof said premises may be sold by and under the direction of this court, and the proceeds of such sale be applied to the payment of the amount found due your orator as aforesaid, together with all costs and expenses; and that the said Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, trustee, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor and all the other defendants hereto, and all persons claiming under them subsequent to the filing of the original bill in this cause may be foreclosed and barred from all equity of redemption or claim in and to said premises conveyed by said trust deed and every part thereof; or if the court shall find that the interest of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor and Robert C. Taylor is now conveyed by said trust deeds, and that in default of the payment of the amount found due to your orator as aforesaid, that the interest of said Frank C. Taylor and Maria L. Taylor under said trust deed to Ira Scott be first sold under the direction of this court, and the proceeds of such sale be applied to the payment of the amount due your orator as aforesaid together with all costs and expenses; and if such sale shall fail to satisfy the amount due to your orator as aforesaid, together with such costs and expenses, then that the court order said Charles H. Mulliken, as trustee, to sell all the interest of said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor and Robert C. Taylor in said premises, or so much thereof as shall be necessary to satisfy the balance then remaining unsatisfied of the amount found due to your orator as aforesaid, with costs and expenses as aforesaid; and that the said Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, trustee, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor, and all persons claiming under them subsequent to the filing of the original bill in this cause may be foreclosed and barred from all equity of redemption or claim in or to said premises conveyed by said trust deed and every part thereof; and that in case said trustees shall refuse to make such sale, then that said court direct the master in chancery of said court or some other person to make such sale; and further that in case the proceeds of such sales shall be insufficient to pay the costs and expenses of this suit, and of such sales and the amount so found due to your orator, then that the said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken may be decreed to pay to your orator the amount of such deficiency; that your orator

may have the benefit as against all of the defendants hereto of all the proceedings heretofore had, and all the proofs heretofore taken in said cause, and that your orator may have such other and further relief in the premises as your Honors shall seem meet and the nature of this case shall require.

May it please your Honors to grant unto your orator a rule of this Honorable court upon the defendants Charles H. Mulliken, Maria L. Taylor, James C. Grant, M. C. Baldwin, the Gowen Marble Company, and Orville Peckham, guardian *ad litem* in this cause for the infant defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, and Alexander Taylor, ordering said Peckham as guardian *ad litem* for said infant defendants, and said Mulliken, Maria L. Taylor, James C. Grant, M. C. Baldwin, and the Gowen Marble Company, to answer the premises by such day as may be by the court appointed in accordance with the rules and practice of this court, and also grant to your orator the writ of subpœna of the United States of America to be directed to the said Frank C. Taylor, Robert C. Taylor, Edward W. Russell, successors in trust, George S. Carmichael, Harriet K. Carmichael, Michael Bryne, Thomas O'Brien Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased, and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar, deceased, Ellis S. Cheseborough, Jr., assignee in bankruptcy of said Frank C. Taylor, and the State Bank of Nebraska, thereby commanding them, and every one of them at a certain day, and under a certain pain to be therein specified personally to be and appear before your Honors in this Honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein, as to your Honors shall seem meet.

And your orators will ever pray, etc.

FRANKLIN SAVINGS BANK,

By W. H. SWIFT,

*Its Attorney.*

W. H. SWIFT,
*Of Counsel.*

GRANT & SWIFT,
*Solicitors.*

Exhibits to this supplemental bill omitted because already in the record; Exhibit A being decree in *Taylor* vs. *Scott*, on page 24; Exhibit B, being decree in *Taylor* vs. *Scott*, on page 56; Exhibit C, being alleged original trust deed, on page 28.

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 7a," answer of infant defendants in the last above entitled cause, filed April 10, 1880, which is as follows:

CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

The Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor and Katherine Taylor.

ORIGINAL, AMENDED AND SUPPLEMENTAL BILLS.

*The joint and several answers of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor and Katherine Taylor, infants, under the age of legal majority, by Orville Peckham, their guardian ad litem, to the original bill of complaint, the amended bill of complaint and the two supplemental bills of complaint of the Franklin Savings Bank, of Pawtucket, Rhode Island.*

These defendants, answering by their said guardian, say, that they neither admit nor deny the allegations of said bills, but demand strict proof thereof, and that they are infants, and that they claim such interests in the premises mentioned in said bill as they are respectively entitled to, and submit their interests to the protection of this Honorable court.

FRANK C. TAYLOR, JR,
MARIA LOUISE TAYLOR,
JOSEPHINE S. TAYLOR,
ALEXANDER TAYLOR,
ROBERT C. TAYLOR,
KATHERINE TAYLOR,
*Infants,*

By ORVILLE PECKHAM,
*Their Guardian ad litem.*

EDW. O. BROWN,
*Solicitor and of Counsel.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 7b," replication in the above cause, filed April 29, 1880, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*Complainant.*
*vs.*
Frank C. Taylor, *et al.*,
*Defendants.*
} *In Chancery.*

*The replication of Franklin Savings Bank, the complainant in said cause, to the answer of Orville Peckham, as guardian ad litem of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor and Robert E. Taylor.*

This repliant, for replication to the said answer, saith, that it will aver and prove its said bill to be true and certain and sufficient in law, and is ready to aver and prove the same as this Honorable court shall direct, and hereby prays as in and by its said bill it has already prayed.

FRANKLIN SAVINGS BANK,

By W. H. SWIFT,
*Its Attorney.*

W. H. SWIFT,
*Of Counsel,*

GRANT & SWIFT,
*Solicitors.*

By Mr. KENDALL: I also offer in evidence as complainants' "Exhibit 7c," decree of sale in above entitled cause, entered April 29, 1880, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT.

Franklin Savings Bank of Pawtucket, Rhode Island,

*vs.*

Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert E. Taylor, Chas. H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar, as administrators of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and The State Bank, of Nebraska.

This cause this day coming on to be heard, and it appearing to the court that the defendant, Frank C. Taylor, has been duly summoned, and has failed to appear, on motion of counsel for the complainant, it is ordered that the original and supplemental bills be, and the same are hereby taken, as confessed by said Frank C. Taylor.

And it is further ordered, on motion of counsel for the complainant, that the bill of complaint be dismissed as to the defendant, M. C. Baldwin.

And it is further ordered, on motion of the counsel for the complainant, counsel for the guardian *ad litem* being present, and no

cause to the contrary being shown, that complainant have leave to file a replication *nunc pro tunc*, as of April 10, 1880, to the answer of the guardian *ad litem*, filed upon that day.

And it is further ordered, on motion of counsel for the defendants, Maria L. Taylor and Charles H. Mulliken, trustee, that said defendants have leave now to refile the answer heretofore filed by them to the original bill of complaint in said cause, and that said answer be taken as their answer to the original and supplemental bills in said cause.

And said cause being then set down for final hearing by the court, and W. H. Swift, of counsel for the complaint, being present, and E. O. Brown, of counsel for the defendants, Maria L. Taylor and Charles H. Mulliken, trustee, and for Orville Peckham, the guardian *ad litem* for the infant defendants in said cause, and the cause having been fully heard and the court being fully advised in the premises, doth thereupon order, adjudge and decree, and it is hereby ordered, adjudged and decreed that there is due to the complainant from the defendants, Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, at the date of the entry of this decree, the sum of sixty-one thousand six hundred and three dollars and twenty-one cents ($61,603.21), and from the defendant, Frank C. Taylor, the further and additional sum of four thousand seven hundred and forty dollars and twenty-five cents (4,740.25).

And the court doth further find, adjudge and decree that said sums are secured by the five trust deeds described in the bill of complaint in said cause upon lots one, two, four and five, in the subdivision of lot four in block sixteen, Bushnell's addition to Chicago, Cook county, Illinois; $15,461.25 of said sum being secured upon lot one of said subdivision by the trust deed described in said bill and recorded in the recorder's office in and for said Cook county, in book 303 of records, at page 227; $15,371.82 being secured upon lot two in said subdivision by the trust deed described in said bill and recorded in said recorder's office in book 306 of records, at page 207; $15,385.07, being secured upon lot four in said subdivision by the trust deed described in said bill of complaint and recorded in said recorder's office in book 242 of records, at page 614; $15,385.07 being secured upon lot five in said subdivision by the trust deed described in said bill of complaint, and recorded in said recorder's office in book 242 of records, at page 609, and said sum of $4,740.25 being secured upon all of said lots one, two, four and five, in said subdivision by the trust deed described in said bill of complaint, and recorded in said recorder's office in book 338 of records, at page 159.

And the court doth further find, adjudge and decree that each of the trust deeds above described conveyed the premises in and by it described to Francis S. Howe, as trustee, for the use of the complainant in said bill, that said Howe has since died and the defendant, Edward W. Russell, the successor in trust named in each and all of said trust deeds, has become seized of the legal title of the premises conveyed by said trust deeds, and holds the same for the uses and purposes for which the same was conveyed to the said Howe.

And the court doth further order, adjudge and decree that the four trust deeds first above described and dated August 23, A. D. 1873, are and each of the same is a valid lien upon the premises by it conveyed, subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, the Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor, were defendants; and that the trust deed firstly above described dated January 1, A. D. 1874, is a valid lien upon the premises by it conveyed, subject to the first liens of the said decree rendered by the Circuit court of Cook county and of the four trust deeds above described.

And thereupon, on motion of the counsel for the complainant it is ordered, adjudged and decreed that the defendants, Frank C. Taylor, Maria L. Taylor, wife of said Frank C. Taylor, and Charles H. Mulliken, trustee, or some of the other defendants in this cause pay to said complainant within ten days from the date of the entry of this decree the sum of $61,603.21, with interest thereon at the rate of six per centum per annum, from the date of the entering of this decree to the day of such payment, and that the defendant, Frank C. Taylor, or some of the other defendants in this cause pay to the complainant within ten days from the date of the entry of this decree the sum of $4,740.25, with interest thereon at the rate of six per centum per annum from the date of the entry of this decree to the day of such payment, and in case said sum of $61,603.21 and said sum of $4,740.25 shall not be paid within ten days, as aforesaid, with interest as aforesaid, then the premises described in said bill of complaint, and hereinbefore described, shall be sold to satisfy the indebtedness secured thereby as herein adjudged and determined, provided, that if within said ten days from the date of the entry of this decree that part of the indebtedness to said complainant which is secured upon either of the lots hereinbefore described shall be paid to said complainant, such

lot or lots so discharged of its lien shall not be sold under this decree.

The premises to be sold under this decree are lots one, two, four and five in the subdivision of lot four in block sixteen, Bushnell's addition to Chicago, county of Cook and state of Illinois, together with all and singular the tenements, hereditaments appurtenances thereunto belonging. And the court doth order, adjudge and decree that such sale be made by Henry W. Bishop, Esq., a master in chancery of this court; that in making such sale, said master first offer for sale the right, title and interest of the defendants, Frank C. Taylor and Maria L. Taylor, his wife, in the premises to be sold, and if said interest shall not sell for enough to satisfy the amount of the indebtedness secured upon said premises as herein adjudged and determined, said master shall there and thereupon at once offer for sale and sell said premises discharged from all claims by or on behalf of any and all of the defendants to this cause (except the equity of redemption which may be given by the laws of the state of Illinois) and discharged from all trusts heretofore existing in favor of either of said defendants.

And the court doth further order, adjudge and decree that said master make such sale at the front door upon La Salle street of the building in which this court is now held, in the city of Chicago, Cook county, Illinois, and that he give public notice of the time and place of holding such sale by publishing an advertisement thereof once a week for three successive weeks in a newspaper published in the city of Chicago, in the county of Cook and state of Illinois, the first publication of such notice being not less than twenty-one days previous to the time of such sale; that at such sale the complainant, or any of the parties to this cause, may be the purchaser or purchasers; that the said master shall give to any purchaser at such sale a certificate of sale in pursuance of the law of the state of Illinois concerning the sale of real estate by virtue of a decree of foreclosure of mortgage, and shall cause a duplicate of such certificate to be recorded as required by law.

It is further ordered that if the said premises or any parcel thereof shall at such sale be struck off and sold by the master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale, on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale, and the master's fees, disbursements and expenses, and the costs of this suit, and also any excess of the remainder of the amount of said bid after such payment, over the amount due the complainant under this decree for indebtedness secured by said trust deeds.

It is further ordered that said master make report to this court of such sale, and of his acts aud doings hereunder for approval and confirmation, and for further direction herein, and that he retain from the moneys received by him on said sale, the amount of his fees, disbursements and commissions thereon, and bring the residue of such moneys, if any, into court, to abide the further order of the court, and that he take the receipt of the clerk of this court therefor, and file the same with said report; and if the price for which said premises shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due the complainant, with the interest thereon, and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale.

And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master, subject to the further order and the direction of this court in this cause.

It is further ordered that if any sale made by said master under this decree shall be confirmed by this court, and if the land so sold shall not be redeemed according to the laws of the state of Illinois, the master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and deliver to the legal holder of any certificate of sale issued under this decree, a deed of conveyance of the land in such certificate described, which shall not have been so redeemed.

And it is further ordered, adjudged and decreed that the defendants in this cause, and all persons claiming by, through or under them, or either of them, since the filing of the original bill of complaint in this cause, be forever barred and foreclosed from all equity of redemption and claim of, in and to said above described land and premises, and any part and parcel thereof, which shall be sold, as aforesaid, under this decree, and which shall not be redeemed according to law.

And it is further ordered, adjudged and decreed that upon the execution aud delivery of the deed or deeds of conveyance as aforesaid, the grantee or grantees, his or their heirs or assigns, be let into the possession of the portion of said mortgaged premises as conveyed to him or them, and that any of the parties in this cause who may be in possession of said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, on the production of said master's deed of conveyance and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their assigns.

By Mr. KENDALL: I also offer in evidence as complainant's "Exhibit 7d" order of court entered July 14, 1880, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT.

Franklin Savings Bank, of Pawtucket
*vs.*
Frank C. Taylor, *et al.* } *In Chancery.*

This cause this day coming on to be heard upon the report of John D. Harvey, Esq., the receiver heretofore appointed in said cause, which report was filed herein upon the 14th day of July A. D. 1880, and upon the report of Henry W. Bishop, Esq., master in chancery of this court, to whom said receiver's report has been heretofore referred for examination by order heretofore entered herein, and it appearing to the court that said master has found said receiver's report correct, and that the same is in accordance with the powers of such receiver and the orders heretofore made in said cause, it is therefore ordered that said receiver's report be and the same is hereby ratified and approved.

And it further appearing from said receiver's report that said receiver has in his hands the sum of $5,252.41, it is ordered that said receiver pay such balance to the solicitor of said complainant, and that the same be credited upon the deficiency due as shown by the master's report of sale heretofore filed in said cause.

By Mr. KENDALL: I also offer in evidence as complainant's "Exhibit 7e," order of court entered November 16, 1880, which is as follows:

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, *et al.*

This cause again coming on to be heard upon the report of Henry W. Bishop, master in chancery of this court, upon the report of J.

D. Harvey as receiver herein, which said master's report bears date November 13, 1880, and the court be fully advised in the premises, it is ordered that said master's report upon said receiver's report be, and the same is hereby ratified and confirmed.

And it appearing to the court from said report that there is a balance in said receiver's hands of $967.44, it is ordered that said receiver pay said sum, less the master's fees for said report, to complainant's solicitors, to be applied on the deficiency decree herein.

By agreement of counsel, further proceedings are adjoined subject to call of counsel.

MARCH 30, 1889.

Examination resumed pursuant to agreement.

Counsel present as before..

By Mr. KENDALL: I offer in evidence, quit-claim deed from Ira Scott and Francis B. Peabody to Charles H. Mulliken, trustee, etc., dated September 10, 1873, as complainant's "Exhibit 5½," to be copied into this record on page 66.

It is stipulated by counsel that the complainant may put in evidence the agreement between the Franklin Savings Bank and Orville Peckham, guardian *ad litem*, upon the production of the same by the defendant, Franklin Savings Bank.

MARCH 25, 1889.

By agreement of counsel the agreement called for by complainant is offered in evidence as complainant's "Exhibit No. 8," pursuant to stipulation heretofore entered in said cause, which is as follows:

Memorandum of settlement agreed on between the Franklin Savings Bank and Orville Peckham, guardian *ad litem* for the infant defendants in the suit, *the Franklin Savings Bank* vs. *Taylor, et al.*, and Edward O. Brown, attorney for said guardian and for infant defendants in said cause.

The defendants (the trust estate), to have one of the inside houses free and clear from all encumbrances and one fourth of the money remaining in the receiver's hands at the final disposition of the cause.

From the money in the receiver's hands is to come the amount sufficient to settle the Grant & Price lien, the Gowen MarbleCompany claim, the costs of court and $1,101.17, with interest at nine per cent. from August 20, 1876 (being the amount paid by the complainant before the receiver was appointed), before the balance is divided. Also all outstanding claims for taxes, insurance, etc., are to be paid.

It is agreed also that the corner house may be taken by the defendants instead of an inside one, if they will pay the complainant the difference in value between that house and an inside one, which may be agreed on between the parties hereto, or may be shown by an appraisement if said parties do not agree. If any appraisement is necessary it is to be made by parties agreed on between Mr. Swift and Mr. Brown.

The difference is to be paid in cash or property secured by mortgage on the property, but in the latter case, the amount in the receiver's hands, which would otherwise come to the defendants, is to go to the complainant, is to be applied on said difference and credited on the same.

After the appraisement is made, if one is made, the defendants may exercise their choice in taking or not taking the corner house on the conditions named, instead of an inside one.

ORVILLE PECKHAM,

*Guardian ad litem.*

EDWARD O. BROWN,

*Attorney for the Guardian ad litem for infant Defendants.*

THE FRANKLIN SAVINGS BANK,

By GRANT & SWIFT.

If above settlement is fully effected no collection is to be made from Mrs. Taylor on the notes.

FRANKLIN SAVINGS BANK,

By GRANT & SWIFT.

MAY 28, 1889.

Examination resumed pursuant to notice.

Counsel present as before.

DEFENDANT'S EVIDENCE.

E. W. RUSSELL being first duly sworn, testified on behalf of defendant as follows:

*Direct Examination by Mr. Swift.*

Q. Mr. Russell, you are a member of the Illinois Bar, and a practicing lawyer in this city, are you not?
A. I am.
Q. And you have been for how many years?
A. Thirty years.
Q. In June 1871, what was the style of your firm?
A. Howe & Russell.
Q. Francis S. Howe?
A. Francis S. Howe.
Q. In what year did Mr. Howe die?
A. In 1878.
Q. I wish you would look at the deed which I now hand you. which has been introduced in evidence as complainant's Exhibit No. 1, and state whether that was prepared by your firm, at or about the time it bears date?
A. This deed was drafted by myself as a member of the firm of Howe & Russell, about the time that it bears date?
Q. Was it executed and delivered about the time it bears date?
A. It was.
Q. Since that time have you seen it at all until this day?
A. I don't remember that I have seen it until to-day.
Q. Will you now look at the original bill of *Frank C. Taylor et al.* vs. *Ira Scott et al.*, filed in the Superior court of Cook county, January 30, 1873, as general number 42,146, which has been already introduced in evidence by the complainant, and state whether that bill was prepared and filed by your firm?
A. It was.
Q. At whose request?
A. Request of Frank C. Taylor.
Q. Will you state, Mr. Russell, if you please, what efforts your firm made in the prosecution of the suit commenced by that bill, to restore the terms of the trust deed which I just showed you?

By Mr. KENDALL: I think that is objectionable; I suppose the records of that case having been put in evidence, will show what efforts were made.

By Mr. SWIFT: I don't care to repeat; I will see what appears in the record as a matter of record, but what does not appear in the record I will ask you to say.

A. At the time I was requested to draw this bill and restore the lost trust deed—supposed lost trust deed, I gave the matter, myself, careful attention, as I originally drafted the instrument itself. I conferred also with Mr. F. C. Taylor, with my partner, F. S. Howe, with Rufus C. Hall, who was a clerk in my office at that time, and who copied the instrument after it was drafted by myself, and in whose handwriting it now is, and also with Mr. Ira Scott, the trustee; and upon the concurrent views of all these parties that I have mentioned, the draft of the trust deed was restored by myself, so that we all thought at the time that it was nearly a literal copy of the original.

By Mr. KENDALL: I object to this testimony, it don't seem to me that it is competent.

By the MASTER: I think I will allow the evidence to go in subject to the objection.

By Mr. KENDALL: If the inquiry is confirmed simply to the good faith of the parties, I don't know but what we admit that.

(Answer continued.) In preparing the original deed I had occasion to consult the trustee, Mr. Scott, and my partner, Mr. Howe, frequently, and the matter was considered for some weeks before it was finally consummated, and an office copy made by Mr. Hall, and in preparing to restore the deed, I relied upon the knowledge which each of these parties had acquired by frequent consideration and by the concurrence of Mr. Taylor, who was also thoroughly familiar with the instrument, and when it was completed, believed that it was substantially a copy of the first instrument.

Q. That restored instrument which was made up by you in the way you have stated, is the one incorporated in the decree in this case, is it?

A. It is.

Q. When did you first learn that the original trust deed which has been shown to you, was not destroyed by fire as you believed when you filed this bill just mentioned in evidence?

A. Well, as near as I can remember, it was some weeks before this bill was filed.

Q. Some weeks before this bill was filed that we are now taking testimony in?

A. Some weeks before the bill was filed to restore the trust deed; some few weeks.

Q. The question I ask, Mr. Russell, is, when you first learned that the original trust deed had not been destroyed by fire, as alleged in this bill?

A. I never knew it until the original bill in this suit was filed.

Q. Meanwhile, had your firm taken other proceedings in reference to this property?

A. We had defended the property in the mechanics' lien suit brought by Gilsdorff.

Q. Will you look at the bill in chancery which I now hand you, that was filed in the Superior court of Cook county, July 23, 1873, as original No. 44,331, and state whether your firm did not file that bill?

A. We did. My firm did file that bill.

Q. That bill was filed, as appears from the record, it already having been introduced in evidence as complainant's Exhibit No. 4, amongst other things, for the purpose of having a new trustee appointed, and recites the filing of the previous bill and the restoration of the terms of the trust deed. At the time your firm filed this last bill, did you still believe that the previous bill had, as literally as possible, restored the terms of that first deed?

A. I did.

Q. And at whose instance did your firm file this last bill?.

A. Frank C. Taylor's.

Q. Will you now look at the petition for a mechanic's lien in the case of *Gilsdorff* vs. *Taylor*, filed September 14, 1873, in the Circuit court of Cook county, Illinois, which has already been introduced in evidence as complainant's Exhibit 6, and state whether your firm acted as attorneys for any defendant in that suit, and if so, at whose request, and I also show you in connection therewith, the answer, introduced by complainant, as Exhibit 6b.

A. My firm of Howe & Russell appeared for Francis S. Howe, Franklin Savings Bank, Charles H. Mulliken, George Taylor and Ira Scott, at the request of Frank C. Taylor.

Q. That is, you answered for each and all of those defendants, at his request?

A. Yes.

Q. Did the bank itself, ever see that answer, Mr. Russell?

A. No, sir; it was never sent to them.

Q. Your firm acted for those parties in the defense of that suit?

A. Yes, sir.

Q. Both in the Circuit court and in the Supreme court?

A. Yes, sir.

Q. Was that defense made in good faith, Mr. Russell?.

A. It was.

Q. Did your firm, in the making of that defense, have any doubt but that the restored copy of the trust deed was in legal effect the same as the original trust deed?

A. Not the least doubt whatever.

Q. Was there any concealment from the court, or from either court of any of the facts connected with the existence of that trust deed and the restored copy?

A. There could have been no concealment on the part of Howe & Russell. We supposed that the trust deed as restored was a copy of the original, and we did not and could not have concealed from the court the knowledge that it was not.

Q. I will show you also the petition of F. and E. Baumann, which was an intervening petition in the same case, and has been introduced here by the complainant as Complainant's Exhibit 6a, and ask you whether the petitioners in those separate petitions as shown by that trial, acquired their rights in dependence upon this restored trust deed?

By Mr. KENDALL: That is objected to; I don't think it is competent for the witness to answer that question, what these other people acquired, and what they depended upon.

Q. I will change the question. Had the petitioners or any of them in that mechanics' lien suit, any other knowledge than you had, so far as you know, of the terms of the trust deed?

A. They had not, so far as I know.

*Cross-Examination by Mr. Kendall.*

Q. Mr. Russell, did you ever, in connection with either of these suits in regard to which you have testified, have any consultation with any officer, agent or attorney for the Franklin Savings Bank in reference to their interests involved in the property?

A. I do not remember that I did, and I am confident I did not.

Q. Do you know whether or not your partner, Mr. Howe, had any consultation, or gave any advice to the defendant, Franklin Savings Bank, or any of its representatives?

A. He did not, to my knowledge.

Q. Were you or Mr. Howe the active attorney in these proceedings in court?

A. I drew the bill to secure the trust deed; I drew the subsequent bill of the appointment of Mr. Mulliken as trustee. In the defense of the mechanics' lien suit—the Gilsdorff suit—Mr. Howe, as my senior partner, took the lead in the trial of the case, but I was present and assisted.

Q. Did your firm represent the Franklin Savings Bank in any other matters?

A. I cannot remember. My recollection is that Mr. Howe borrowed some money of the Franklin Savings Bank and secured it by mortgage on his property. Whether he did any business of the bank I cannot recall.

Q. Do you recollect any one representing the bank consulting with Mr. Howe with reference to any of these proceedings about which you have testified?

A. I do not recollect anything of that.

Q. Do you recollect an attorney from Pawtucket named Blodgett having any consultation with you or your partner?

A. I remember Mr. Blodgett, and I remember to have seen him in our office, but I can't recall on what busines he was there.

Q. Couldn't say whether or not it was in reference to these proceedings, or any of them?

A. No, I couldn't; couldn't say whether it was before or after. I remember the fact of his being there.

By Mr. SWIFT: Didn't Mr. Blodgett's visit have reference to the interests of this bank in some property in Riverside, about which there was some litigation?

A. I can't remember about what the nature of his business was.

Signature of witness waived.

MAY 26, 1889.

ALBERT L. COE, being first duly sworn, testified on behalf of defendant as follows:

*Direct Examination by Mr. Swift.*

Q. Your full name?

A. Albert L. Coe.

Q. You are in the real estate business in the city?

A. Yes, sir.

Q. And have been, how many years?

A. Over twenty years.

Q. Do you know the property on the southeast corner of Maple street and Dearborn avenue?

A. Yes, sir.

Q. Have you the house in charge there for the Franklin Savings Bank?

A. Yes, sir; we have three.

Q. That is the corner house and the two south houses?

A. Corner house No. 361 Dearborn avenue, and 353 and 355 Dearborn avenue.

Q. What has that property been worth during the last ten years?

A. 353 and 355 each, $10,000.

Q. And the corner house?
A. 361, on the corner, $16,000, probably.
Q. How long have you had charge of these houses?
A. About four years.
Q. What per cent. on that valuation has the income paid, during that time, in round numbers, if you haven't figured it?
A. I haven't figured it, but the corner house probably from four and a half to five per cent. The two inside houses have paid but very little during the past few years; I don't think they have paid over two per cent., net.

*Cross-Examination by Mr. Kendall.*

Q. How much are they rented for?
A. The two south houses now rent for $750 each, per year; the corner house rented for $1,200 per year.
Q. How long have they been rented at these figures?
A. One of them only one month; the other one has been rented for the past ten or eleven months.
Q. For $750?
A. Yes, sir.
Q. Is that the highest rent that they have ever produced since you had charge?
A. We attempted, when we took hold of them to charge $900 per year, and failed; tried $800, and failed; and the most we could get was $750. They are old style houses, known as a basement and house, two rooms deep; that is the inside houses.
Q. In giving this valuation you include the land, do you not?
A. I do, yes; the land and the building.
Q. How much land does each of those houses cover?
A. Not to exceed twenty feet front by 150 feet deep; there may be a fraction less than twenty.

By Mr. SWIFT: In making your estimate what do you call the land per foot?
A. $250 per foot front; and I can buy in that location for that —that is, improved.

Signature of witness waived.

By Mr. SWIFT: I now introduce in evidence, as Defendant's "Exhibit No. 1," the affidavit of Rufus C. Hall, in the suit of *Frank C. Taylor, et al.*, v. *Ira Scott, et al.*, No. 42,146, in which case the bill has already been introduced in evidence as complainants' Exhibit 2, which is as follows:

STATE OF ILLINOIS, } ss:
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the March T., A. D. 1873.

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, The Franklin Savings Bank, and to all whom it may concern. } *In Chancery.*

Rufus C. Hall being first duly sworn, says that the above named defendant, The Franklin Savings Bank, is a corporation created by the laws of the state of Rhode Island, and has an office and does business in Pawtucket, in said state of Rhode Island, and not in the state of Illinois.

RUFUS C. HALL.

Sworn to and subscribed before me, this 30th day of January, A. D. 1873. }

A. JACOBSON, *Clerk.*

By Mr. SWIFT: I also introduce in evidence as Defendant's "Exhibit No. 2," the summons in the same cause, which is as follows:

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

*The People of the State of Illinois to the Sheriff of said County, Greeting:*

We command you that you summon Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, The Franklin Savings Bank and to all whom it may concern if they shall be found in your county, personally to be and appear before the Superior court of Cook County, on the first day of the term thereof, to be held at the court house, in Chicago, in said Cook county, on the first Monday of March next, to answer unto Frank C. Taylor and Maria L. Taylor in their certain petition to establish and confirm filed in the said court, on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness: Augustus Jacobson, clerk of our said court and the seal thereof at Chicago aforesaid, this 30th day of January, A. D. 1873.

[OFFICIAL SEAL] A. JACOBSON, *Clerk.*

[Endorsed]: Served the within writ on the within named Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, by reading the same and delivering a copy thereof to each of them, this 17th day of February, 1873. Other defendants not found in my county.

F. M. BRADLEY,
*Sheriff.*

By C. G. AYARS,
*Deputy.*

Fees $670, paid.

By Mr. SWIFT: I also introduce in evidence, as Defendant's "Exhibit No. 3," the publication notice in the same cause, which is as follows:

LAND TITLE NOTICE.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

SUPERIOR COURT OF COOK COUNTY.

To Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown. The Franklin Savings Bank, and to all whom it may concern:

Take notice that on the 30th day of January, A. D. 1873, a petition was filed by the undersigned in the Superior court of Cook county, to establish and confirm their title to the following described lands, in the county of Cook, and state of Illinois, namely: All that part of block sixteen (16), in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block; running thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet: thence west one hundred and fifty (150) feet to the place of beginning; the said premises being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, according to the plat of a subdivision of said block sixteen (16), recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, at page 51.

Now unless you appear at the March Term of said court, to be held at the court house, in Chicago, in said Cook county, on the first Monday of March next, and show cause against said application said petition will be taken for confessed, and the title or interest of said petitioners will be decreed and established according to the prayer of said petition, and you forever barred from disputing the same.

FRANK C. TAYLOR,
MARIA L. TAYLOR,
*Petitioners.*

F. S. HOWE,
*Solicitor.*

I, Myra Bradwell, president of the Chicago Legal News Company, do hereby certify that a land title notice, *Taylor* v. *Taylor*, petitioners, of which the annexed printed slip is a true copy, was published for four successive weeks, to-wit: Four times in the *Chicago Legal News*, a weekly newspaper published every Saturday in the city of Chicago, county of Cook, and state of Illinois, and of general circulation throughout said county and state, and that the date of the first paper containing the same was as the 1st day of February, A. D. 1873, and that the date of the last paper containing the same was the 2d day of February, A. D. 1873.

In witness whereof, the president of said Chicago Legal News Company, has hereunto affixed the seal of said company, and subscribed her name at the city of Chicago, this 22nd day of February, A. D. 1873.

[CORPORATE SEAL] MYRA BRADWELL,
*President.*

And I further certify that said company has received seven dollars ($7.00), for publishing the said notice.

MYRA BRADWELL,
*Per M.*

By Mr. SWIFT: I also introduce in evidence as Defendant's "Exhibit No. 4," the order of default and reference to the master, entered by said Superior court in the same case, which is as follows:

Frank C. Taylor, *et al.*,
1255 42146 *vs.*
Ira Scott, *et al.*, } *Bill.*

This day came the complainants to this suit by F. S. Howe, their solicitor, and filed herein due proof of publication in the *Chicago Legal News* of notice to the defendants, "The Franklin Savings Bank," and all whom it may concern, of the pendency of this suit in pursuance of this statute in such case made and provided, and it appearing to the court that due personal service of

process of summons issued in this cause has been had on the defendants, Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Marie Louise Taylor, Josephine S. Taylor and Edward Brown for more than ten days before the first day of this term.

On motion of complainants' solicitor it is ordered by the court that said defendants be, and they are hereby required to plead answer or demur instanter to the bill of complaint filed in this cause, and no plea, answer, demurrer or other matter of defense being interposed herein by the said defendants, and they being now, here three times, solemnly called in open court, come not, nor does any person for them, but herein they make default, which is, on motion, ordered to be taken, and the same is hereby entered herein of record.

And it is ordered by the court that said bill of complaint and the matters and things therein stated and charged be, and the same are hereby taken *pro confesso* by and against said defendants for want of their appearance and answer thereto. And it is further ordered by the court that said cause be, and the same is hereby referred to Benjamin D. Magruder, Esq., one of the masters in chancery of this court, to take the proofs herein and report the same to this court with his opinion on the law and the evidence with all convenient speed.

By Mr. SWIFT: I also offer in evidence as Defendant's "Exhibit No. 5," the order entered by said Superior court, March 6, 1873, appointing a guardian *ad litem*, setting aside the default as to certain parties, and making a new reference to the master, which is as follows:

Frank C. Taylor, *et al.*,
1255
42146 *vs.*
Ira Scott, *et al.* } *Bill.*

This day again come the said complainant, by their solicitor aforesaid, and thereupon, on motion of complainant's solicitor, it is ordered by the court that the default and reference as to the defendants, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, be, and the same is hereby set aside. And it appearing to the court that said defendants, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor are minors, under age.

On motion of said complainants' solicitor it is ordered by the court that Nicholas A. Lauer, Esq., be, and he is hereby appointed guardian *ad litem* for said infant defendants above named to appear and defend this suit in their behalf. And thereupon comes the said Nicholas A. Lauer and accepts his appointment as such guardian *ad litem* and filed herein the answer of said infant defendants, neither admitting nor denying any of the matters and things stated and charged in the bill of complaint filed in this cause, but requiring strict proof thereof. And thereupon on motion of complainants' solicitor and on the agreement of Nicholas A. Lauer, guardian *ad litem* for said infant defendants aforesaid, it is ordered by the court that this cause be, and the same is hereby re-referred to Benjamin D. Magruder, Esq., one of the masters in chancery in this court, to take the proofs herein and report the same to this court with his opinion on the law and the evidence with all convenient speed.

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit No. 6," the report of the master in chancery in said cause, with the depositions accompanying the same, and the appearance of the guardian *ad litem* before said master, which is as follows:

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

SUPERIOR COURT OF COOK COUNTY.

IN CHANCERY.

Frank C. Taylor and Maria L. Taylor
*vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, the Franklin Savings Bank and all whom it may concern.

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT OF COOK COUNTY:

In pursuance of an order, entered in the above entitled cause, by which it was referred to the undersigned, one of the masters in

chancery of the Superior court of Cook county, to take the proofs herein and make report upon the issues of law and fact involved in this cause.

I, the said master, do respectfully report that I have taken certain proofs herein, which are hereto attached and made a part of this report.

I do further report that on the sixth (6th) day of March, A.D. 1873, appeared before me at my office in Chicago the above named petitioners, by their solicitor, who introduced in evidence a certain abstract of title, signed by Shortall & Hoard, and the certificate appended to which bears date the 20th day of June, A. D. 1872, which said abstract of title shows:

1. That a deed bearing date the nineteenth (19th) day of April, A. D. 1871, was executed by Mark Skinner and Eliphalet W. Blatchford, executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased, to Maria L. Taylor, wife of Frank C. Taylor, conveying to said Maria L. Taylor that part of block sixteen (16), in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block; thence north on said east line one hundred and three (103) feet to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet; thence west one hundred and fifty (150) feet to the place of beginning, being the same as lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, in the county of Cook and state of Illinois, which said deed was recorded in the recorder's office of Cook county, Illinois, on the 14th day of June, A. D. 1871, in book 663, at page 299.

2. That a contract bearing date the 20th day of August, A. D. 1866, was made by Walter L. Newberry in his lifetime, with the said Maria L. Taylor, for the conveyance of the above described property and in pursuance whereof the deed aforesaid was executed by said executors and trustees, which said contract was recorded in said recorder's office on the 20th day of April, A. D. 1871, in book 658, page 371.

3. That a deed in trust bearing date the 13th day of June, A. D. 1871, was executed by the said Maria L. Taylor and her husband, Frank C. Taylor, to Ira Scott, conveying the property aforesaid, which said deed in trust was recorded in said recorder's office on the 15th day of June, A.D. 1871, in book 673, at page one (1), and a copy whereof is attached to the petition filed in this cause.

Which said abstract so introduced as aforesaid is herewith returned, marked "Exhibit No. 1."

And from the evidence thus introduced and taken before me, I find:

That the petitioner, Maria L. Taylor, on the 13th of June, A. D. 1871, was seized and possessed in fee simple absolute of the premises hereinbefore and in the petition herein described, and derived her title to the same by virtue of the deed so as aforesaid executed to her by said executors and trustees.

That Exhibit A, attached to the petition in this cause is a substantial copy of the deed of trust, so as above executed by said petitioners to said Ira Scott, and the character and extent of the estate claimed by said petitioners is fully set forth in said deed of trust, of which said "Exhibit A" is a copy.

That Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor are the sole surviving children of said petitioners, and alone interested in said trust, save the interest of said petitioners and the contingent interest of the heirs at law, devisees and legatees of said petitioner, Frank C. Taylor. That the premises aforesaid are subject to a deed of trust, dated June 26, 1872, executed by said petitioners to Edward Brown, as trustee, to secure the payment of a note, owned by the Franklin Savings Bank of Pawtucket, in the state of Rhode Island.

That on the 8th and 9th days of October, A. D. 1891, the deed of trust, deed and contract above described, and the records thereof in the recorder's office of Cook county, were destroyed by fire.

That the said petitioners are now and were at the time of the fire aforesaid in the sole and undisputed possession of said premises under said Scott, as trustee, that the same were occupied by said petitioners as a homestead at the time of said fire; that the said Maria L. Taylor has had possession thereof since August 20, 1866, and paid all taxes assessed thereon since that date.

That no other persons, except those named in the petition herein, are in possession of said premises or own or claim any estate therein or in any part thereof, and that no other conveyances thereto have been made or recorded since the destruction of said records, except as stated in said petition.

That the material allegations of said petition are sustained by the proofs herein, and the prayer thereof should be granted.

All of which is respectfully submitted.

Dated March 6, 1873.

BENJAMIN D. MAGRUDER,

*Mastery in Chancery of the Superior court of Cook county.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

SUPERIOR COURT OF COOK COUNTY.

IN CHANCERY.

Frank C. Taylor, *et al.*, }
*vs.* }
Ira Scott, *et al.*, }

I hereby enter my appearance at the taking of proofs in the above cause before B. D. Magruder, master of said court, at his office in Chicago, on the 6th day of March, 1873.

NICHOLAS A. LAUER,

*Guardian ad litem of minor defendants, Frank C. Taylor, Jr., Maria L. Taylor and Josephine S. Taylor.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

SUPERIOR COURT OF COOK COUNTY.

IN CHANCERY.

Frank C. Taylor, *et al.*, }
*vs.* }
Ira Scott, *et al.*, }

The depositions of witnesses produced, sworn and examined on the part of the complainants in the above entitled cause taken before me, Benjamin D. Magruder, one of the masters in chancery of the Superior court of Cook county, at my office in Chicago, on the 6th day of March, A. D. 1873, pursuant to an order of reference heretofore entered in said cause. The complainants appearing by their solicitor, Mr. Howe, and the complainant, Frank C. Taylor, in person, the minor defendants by their guardian *ad litem*, pursuant to the entry of appearance hereto attached; no one appearing for the other defendants.

FRANK C. TAYLOR, one of the complainants, being produced, sworn and examined, deposes and says:

My name is Frank C. Taylor. I am one of the complainants in this cause; I live in Chicago; I am a banker; I bought for my wife, Maria L. Taylor, who is one of the complainants with me, all that part of block 16, in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street, 300 feet north of the southwest corner of said block; running thence north on said east line 103 feet to the northwest corner of said block; thence east on the south line of Maple street 150 feet to an alley; thence south parallel with Dearborn street 103 feet; thence west 150 feet to the place of beginning, the said premises being the same as lot 4, in block 16, Bushnell's addition to Chicago, as described in the petition in this case, said land being in Cook county, Illinois. I bought these premises which I have described August 20, 1866,

of Walter S. Newberry, and received from him a contract for a deed; the contract was with my wife; in pursuance of this contract the executors and trustees of Walter L. Newberry gave my wife a deed April 19, A. D. 1871, which was recorded June 14, 1871; before the time named in the contract expired Walter S. Newberry had died; my wife had made all the payments named in the contract before April 19, 1871; Newberry left a will; said deed was executed by Mark L. Skinner and Eliphalet W. Blatchford, executors of and trustees under and by virtue of the last will and testament of Walter L. Newberry, deceased; I received the deed myself for my wife; the deed and contract were lost, I suppose destroyed; to the best of my knowledge and belief, they were burned up in the fire of October 9, 1871.

The abstract now introduced before the master was made by Shortall and Hoard June 20, 1872, in the regular course of their business; it was made upon my order and delivered to me when made; "Exhibit A," attached to the bill in this case, I have examined; my wife and I executed a trust deed to Ira Scott, and said "Exhibit A" is a copy of it. I have spent a great deal of time over it and given it a great deal of thought, and have conversed frequently and at length with all the parties who ever knew anything of the original, and I am of the opinion that "Exhibit A" is in substance a correct copy of the original; my recollection is quite clear and distinct as to the terms of the original, of which "Exhibit A" is a copy; "Exhibit A," I consider a correct copy of the original. The trust deed was delivered to Mr. Ira Scott originally, and recorded, and was, I believe, destroyed in the fire October 9, 1871. I have examined all my own papers; do not know where said papers deeds are, and believe them to have burned in said fire; my wife has had possession of the property ever since the date of said contract, August 20, 1866; I have paid all taxes for her assessed upon the property since then; my children of myself and wife, are Frank C. Taylor, Maria Louise Taylor, Josephine S. Taylor, all of whom are minors. This was occupied by us as a homestead at the time of the fire, June 13, 1871. I and my wife executed and delivered to Ira Scott a certain deed of trust, of which the copy attached to the bill is a true copy. I and my wife were in possession of the property at that time; the improvements on the premises were destroyed by fire of October 9, 1871; we are now in possession of them under Scott as trustee; we have since the fire built a block of five stone front houses on the said premises; in the fire the records of the title to this property in the recorder's office of Cook county were destroyed by said fire; on or about June 26, 1872, my wife and myself executed and delivered to one Edward Brown, as trustee, of said Chicago, a certain deed of trust to secure the pay-

ment of a certain note owned by the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, which said deed of trust was afterwards and on or about June 20, 1872, duly recorded in the recorder's office of Cook county.

The said trust deed to Brown was on this property; the note and trust deed were given to secure the payment of money used in the improvement of said property; it has all been used in such improvement. The note was for $30,000. I know of no other persons who claim any interest in said premises or are in possession thereof, except the persons stated in said bill. No other conveyances than those above mentioned in said bill have been made since the loss of said record.

The character and extent of the estate claimed by the petitioners in the said premises is fully set forth in said deed of trust, a copy of which is attached to the petition, marked "Exhibit A."

FRANK C. TAYLOR.

Subscribed and sworn to before me, this 6th day of March, 1873.

BENJAMIN D. MAGRUDER,
*Master in Chancery of the Superior Court of Cook County.*

E. W. RUSSELL, a witness produced, sworn and examined on the part of the complainants, deposes and says:

My name is E. W. Russell. I am an attorney at law in the city of Chicago. In the early part of the summer of 1871 I was engaged in the practice of law in Chicago, and was employed by Maria L. Taylor and Frank C. Taylor, her husband, of Chicago, to draft a deed of trust from them to Ira Scott of Chicago, as trustee, conveying to him the premises mentioned in the petition in this case, as trustee.

During the time of the drafting of the trust deed and after it was drawn, I had several interviews with said Maria L. and Frank C. Taylor and Ira Scott, in relation to the nature of the trusts, so that I remember what the said trust deed was in substance, and upon a careful examination of Exhibit A, attached to the bill in this case, I testify that said Exhibit A, is a substantial copy of the original conveyance to Ira Scott. The said conveyance was ac-

knowledged before me as a notary public, on June 13, 1871, and was dated June 10, 1871, and was subsequently recorded in the recorder's office of Cook county, June 15, 1871, in book 673 of deeds, at page 1.

EDWARD W. RUSSELL.

Subscribed and sworn to before me, this 6th day of March, A. D. 1873.

BENJAMIN D. MAGRUDER.

*Master in Chancery of the Superior Court of Cook County.*

RUFUS C. HALL, a witness produced, sworn and examined on the part of the complainants, deposes and says:

My name is Rufus C. Hall. I am an attorney at law, in Chicago. At the time the deed of trust mentioned in the petition in this cause was drafted I was in the office of Mr. E. W. Russell, who drafted it. I copied it and became quite familiar with the provisions of the trust deed, and talked it over with Mr. Russell. Exhibit A, attached to the petition, is in my handwriting, and I believe it to be a substantial copy of the original trust deed executed to Ira Scott, by the complainants.

RUFUS C. HALL.

Subscribed and sworn to before me, this 6th day of March, 1873.

BENJAMIN D. MAGRUDER.

*Master in Chancery of the Superior Court of Cook County.*

I, Benjamin D. Magruder, master in chancery of the Superior court of Cook county, do hereby certify that previous to the commencement of the examination of the witnesses whose names are subscribed to the foregoing depositions, they were each by me duly sworn according to law, that the same were taken upon oral interrogatories propounded by the solicitor of the complainants, and were subscribed and sworn to by said witnesses respectively before me, on the 6th day of March, A. D. 1873.

BENJAMIN D. MAGRUDER.

*Master in Chancery of the Superior Court of Cook County.*

Master's fee $10, paid by complainant's solicitor.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit No. 7," the order of said Superior court, confirming said master's report, which is as follows:

Frank C. Taylor and Maria L. Taylor
1255
42146 *vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, The Franklin Savings Bank, and all whom it may concern. } *Decree.*

On reading and filing the report of Benjamin D. Magruder, Esq., one of the masters in chancery of this court, which report bears date the 6th day of March, A. D. 1873, and was made in pursuance of an order of this court heretofore made in this cause referring it to the said master to take the proofs herein and make report upon the issues of law and fact involved in the cause. On motion of F. H. Howe, solicitor for petitioners, and L. A. Lauer, guardian *ad litem* of defendants Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, appearing in open court and assenting thereto, it is hereby ordered, adjudged and decreed that said report and all things therein contained do stand ratified and confirmed.

It is stipulated by counsel that the decree offered in evidence by solicitor for complainant, on page 43 of the record as Exhibit 3a, was entered in said cause on the 29th day of March, 1873.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit No. 8," the *bill of review* in the aforesaid cause, in the Superior court of Cook county, being the same case in which complainant has offered the decree as "Exhibit 3a," being the case of *Taylor, et al.*, vs. *Taylor, et al.*, No. 42,146, excepting the exhibits, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

June Term, A. D. 1873.

IN CHANCERY.

Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor,
*vs.*
Frank C. Taylor, Maria L. Taylor, Alexander Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Edward Brown, The Franklin Savings Bank, Francis S. Howe and Edward W. Russell.

TO THE HONORABLE THE JUDGES OF THE SUPERIOR COURT, IN CHANCERY SITTING:

Your orators, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, all infant minors, by Orville Peckham, their

next friend, bring this their bill of complaint against Frank C. Taylor, Maria L. Taylor, Alexander Taylor and Robert C. Taylor, Ira Scott, Francis B. Peabody, Edward Brown, the Franklin Savings Bank, of Pawtucket, Rhode Island, Francis S. Howe and Edward W. Russell, and humbly complaining show unto your Honors, that on the 30th day of January, in the year of our Lord 1873, Frank C. Taylor and Maria L. Taylor (hereinafter named defendants), filed in the office of the clerk of this Honorable court their certain bill of complaint entitled to the March Term thereof, against your orators and against Ira Scott, Francis B. Peabody, Edward Brown, the Franklin Savings Bank (hereinafter named defendants), and all whom it might concern, a copy of complaint is annexed hereto and marked "Exhibit No. 1." And your orators pray that it may be here inserted and considered a part of this bill.

And your orators show that on the 5th day of March, in said year, being one of the days of the March Term of this court, the said bill of complaint, and the matters and things therein stated and charged, were taken *pro confesso* by and against all said defendants in said bill of complaint for want of their appearance and answer thereto, and the cause was referred to Benjamin D. Magruder, Esq., one of the masters in chancery of this court, to take proofs therein and report the same to the court with his opinion on the law and evidence.

And your orators further show that on the 6th day of March, in the same year, being one of the days of the March Term of this court, on motion of the complainant's solicitor, it was ordered by this court that the default and reference as to the defendants, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, be set aside, and it was further ordered, that it appearing to the court that the said defendants, Frank C. Taylor, Jr., Maria Louise Taylor, and Josephine S. Taylor were minors under age, Nicholas H. Lauer be appointed guardian *ad litem*, for said defendants, and thereupon the said Nicholas H. Lauer, as such guardian *ad litem*, filed an answer for your orators, which was in the words and figures, following, to-wit:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the March Term, A. D. 1873.

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Edward Brown, The Franklin Savings Bank, Josephine S. Taylor and to all whom it may concern. } *Bill in Chancery.*

*The joint and several answers of Frank C. Taylor, Jr., Maria Louise Taylor, and Josephine S. Taylor, defendants, by their guardian ad litem, N. A. Lauer, to the bill complaint of Frank C. Taylor and Maria L. Taylor, complainants.*

These defendants, answering by their said guardian *ad litem*, say that they are infants, and therefore submit their rights and interests in the matter in question in this cause to the protection of this Honorable court, without this, that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain and prove as this Honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

NICHOLAS H. LAUER,

*Guardian ad litem for Frank C., Jr., Maria Louise and Josephine S. Taylor, defendants.*

And thereupon your orators show that the cause was again referred to Benjamin D. Magruder, Esq., one of the masters in chancery of this court, to take proofs therein and report the same to this court.

And your orators further show, that on to-wit, the 29th day of March A. D. 1873, being one of the days of the March term of this court that a report of said master having been filed in said cause, a decree was passed and entered by this court in said cause, a copy of which decree is annexed to this bill, marked "Exhibit No. 2," which said exhibit your orators pray to insert here as a part of this bill.

And your orators show that said decree has been duly entered and enrolled in the records of this court, and this decree your orators humbly insist is erroneous and ought to be reviewed, reversed and set aside.

For your orators show unto this Honorable court, by leave of this Honorable court first had and obtained, that since the bringing reference, trial of said cause, and since the entry and enrolling of said decree hereinbefore set forth and immediately before the filing of this bill your orators have discovered that the original deed of trust referred to in the bill of complaint in said cause as made by Maria L. Taylor and Frank C. Taylor to Ira Scott, as trustee, on the 13th day of June, A. D. 1871, was not destroyed by fire October 8 and 9, A. D. 1871, or at any other time, and have discovered said original deed of trust, which said original deed of trust is now in the possession of the next friend of your orator, Orville Peckham, by whom they bring this their bill of complaint and review.

And your orators further show unto your Honors that a copy of said deed of trust is hereto annexed and marked "Exhibit No. 3," and pray that it may be made a part of this bill.

And your orators further show unto your Honors that said deed of trust is entirely and wholly different from the pretended conveyance marked "Exhibit A," annexed to the bill of complaint filed in said cause, and entirely and wholly different from the conveyance set forth in said decree in said cause hereinbefore inserted in this bill.

And that although said actual deed of trust vested in your orators, who are the children of Frank C. and Maria L. Taylor, certain valuable rights and property in the premises described therein, said pretended conveyance so set forth in said decree does not so do.

And your orators say that they were during all the time said cause was pending and when said decree was entered, and have been ever since infant minors, and that their guardian *ad litem* did not protect their rights in said cause, and that they have never in any manner waived or released their rights in said matters, and that they have only just discovered their rights in the same and original deed of trust referred to, and that it was impossible while said cause was pending or ever before this time for them or their guardian *ad litem* in said cause to get possession of said deed of trust, and that they and their guardian *ad litem* were entirely in ignorance and without the means of knowledge of the existence of said deed of trust, and that it was not destroyed by the fire of October 8 and 9, A. D. 1871, as alleged by the complainants in said cause, the said deed of trust having been ever since said bill of complaint in said cause was filed, up to a time but just before the filing of this bill by your orators in

the possession of the complainants in said cause, Frank C. and Maria L. Taylor, although as they now say without their knowledge and contrary to their belief. And your orators show also that the entry of said decree as above set forth, they have only lately discovered, and they say the cause, proceedings and decree operated as a fraud upon the rights of your orators, and were wholly fraudulent and void as against them, your said orators.

Wherefore and by reason of the newly discovered matter, as above set forth, your orators are advised and insist that, under the circumstances aforesaid the said decree in said cause above set forth ought to be reviewed and reversed.

And your orators further show that Francis S. Howe and Edward W. Russell, and the Franklin Savings Bank, of Pawtucket, Rhode Island, and Charles H. Mulliken, claim some rights in said property described in said decree resting on said decree, but which said claims your orators are advised and insist are entirely unfounded.

And your orators further show that Alexander Taylor and Robert C. Taylor are infant children of said Frank C. and Maria L. Taylor, born since the institution of said suit, and have rights in said property of the same nature as those of your petitioner.

In consideration whereof and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Frank C. Taylor, Maria L. Taylor, Alexander Taylor and Robert C. Taylor, Ira Scott, Francis B. Peabody, Edward Brown, the Franklin Savings Bank, Francis S. Howe and Edward W. Russell and Charles H. Mulliken, may (but not upon oath, their oath to their answering being waived) full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated, and they thereunto particularly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also to the best of their several and respective information, hearsay and belief; and more especially that Frank C. Taylor and Maria L. Taylor may answer and set forth whether they had said original deed of trust referred to in their possession at the time of the pendency of said proceedings and the entry of said decree, and whether said deed is now in existence, or was, as by them alleged in said bill of complaint in said cause, destroyed by fire.

And that the said decree in said cause may be reviewed and reversed, and your orators placed in the same position as though such decree had never been made or entered; and that your orators may have such other relief in the premises as the nature of their case shall require, and to your Honors shall seem meet.

May it please your Honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this Honorable court, to be directed to the said Frank C. Taylor, Maria L. Taylor, Alexander Taylor and Robert C. Taylor, Ira Scott, Francis B. Peabody,

Edward Brown, the Franklin Savings Bank, Francis S. Howe and Edward W. Russell, commanding them and each of them by a certain day and under a certain penalty therein to be inserted, to be and appear before said court, and then and there to answer the premises, and further to stand to and abide by such order and decree herein as shall be agreeable to equity and good conscience.

And your orators will ever pray.

FRANK C. TAYLOR, JR.,
MARIA LOUISE TAYLOR,
JOSEPHINE S. TAYLOR,

By their next friend,
ORVILLE PECKHAM.

EDWARD O. BROWN,
*Of Council.*

[Exhibits omitted.]

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 9," the answer of the guardian *ad litem*, to said bill of review, which is as follows:

ANSWER OF ALEXANDER AND ROBERT C. TAYLOR.

STATE OF ILLINOIS, } SS.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the October Term, A. D. 1878.

Frank C. Taylor, Jr., *et al.*,
*vs.*
Frank C. Taylor, *et al.* } *Bill of Review.*

*The joint and several answers of Alexander Taylor and Robert C. Taylor, defendants, by their guardian ad litem, William Coffeen, to the bill of complaint of Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, complainants, by their next friend, Orville Peckham.*

These defendants, answering by their said guardian, say that they are infants, and therefore submit their rights and interest in the matters in question in this cause to the protection of this Honorable court, and demand proof of all the allegations in said bill contained, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM COFFEEN,

*Guardian ad litem for Alexander Taylor and Robert C. Taylor.*

Filed October 9, 1878.

JNO. J. HEALY, *Clerk.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 10," the answer of the Franklin Savings Bank, to said bill of review, filed December 13, 1878, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor.
*vs.*
Frank C. Taylor, Maria L. Taylor, Alexander Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Edward Brown, The Franklin Savings Bank, Francis S. Howe and Edward W. Russell. } *In Chancery.*

*The answer of the Franklin Savings Bank, one of the above named defendants, to the bill of review of the above named complainants.*

This defendant, now, and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of review contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer, saith:

That it admits that on the 30th day of January, 1873, said Frank C. Taylor and Maria L. Taylor, did file in said court a certain bill of complaint, entitled to the March Term thereof, against the above named complainants, and against said Scott, Peabody, Brown and this defendant, as said complainants had in their bill of review alleged.

And further admits that upon the 5th day of March in said year, said original bill of complaint was taken as confessed by and against all of the defendants thereto, and that said cause was referred to Benjamin D. Magruder, as master in chancery of said court, as complainants have in their said bill of review alleged.

And further admits that upon the 6th of March in the same year, said default and reference as to the defendants, Frank C. Taylor, Jr.

Maria Louise Taylor and Josephine S. Taylor, were set aside, and that Nicholas H. Lauer was thereupon appointed guardian *ad litem* for said last named defendants, who were infants; and that the said Lauer thereupon filed an answer as guardian *ad litem* for said infants, in manner and form as complainants have in their said bill of review alleged.

And this defendant further answering, admits that said cause was again referred to said Magruder, as master in chancery, and that upon the 29th day of March, 1873, a report of said master therein was filed in said cause and a decree entered thereon, as the complainants have, in their said bill of review alleged; but whether Exhibit No. 1, attached to said bill of review, is a copy of said original bill of complaint, and whether Exhibit No. 2, attached to said bill of review, is a copy of the decree rendered upon said original bill of complaint, this defendant neither admits or denies, but leaves the complainants to make such proof thereof as they shall be advised is necessary.

This defendant further answering, admits that the decree rendered upon said original bill of complaint has been entered and enrolled in the records of this court, but it denies that the same is erroneous, and denies that the same ought to be either reviewed, reversed or set aside.

And this defendant, further answering, saith that it is ignorant whether or not the complainants in said bill of review have discovered the original deed of trust from Maria L. Taylor and Frank C. Taylor to Ira Scott, made upon the 13th day of June, A. D. 1871, and whether or not the same is now in the possession of Orville Peckham, as said complainants in said bill of review allege, and if complainants have discovered said original deed of trust, this defendant is ignorant as to the time when the same was actually discovered by said complainants, and calls upon said complainants to make strict proof of each and all their allegations in that behalf.

But this defendant avers that if said deed of trust is now in the possession of said Peckham, as said complainants in said bill of review allege, the same might, by ordinary diligence upon the part of said complainants, have been found and produced prior to the entertaining of the decree upon said original bill of complaint, and it was the duty of said complainants so to produce the same.

This defendant, further answering, saith that it has no knowledge, and can neither admit nor deny that Exhibit No. 3, attached to said bill of review, is a true copy of said original deed of trust to Ira Scott, as said complainants have in their said bill of review alleged, and it calls upon said complainants to make strict proof of the allegations in that behalf, made by them in their said bill of review, but this defendant saith that if such Exhibit No. 3 is a true copy of said original deed in trust, and if it is entirely and wholly different from Exhibit A, annexed to said original bill of complaint, as said complainants have in their said bill of review alleged, nevertheless, the interests of this defendant in the premises described in and conveyed by said deed in trust, should not be prejudiced by the discovery of said original deed in trust, nor by such difference in its terms, but should re-

main as fixed after the decree rendered upon said original bill, and as hereinafter set forth.

And this defendant further answering, saith, that it believes it to be true, that the complainants in said bill of review were infants when said original bill of complaint was pending, and when the decree thereon was entered, and believes that they still are infants, as they allege; but this defendant expressly denies that the guardian *ad litem* of said infants, appointed in said cause, failed to protect the rights of said infants therein, and denies the averment of said complainants in said bill of review, that they have never, in any manner, waived or released their rights in said matters; and this defendant also denies that said complainants in said bill of review had, at the time of filing said bill of review, just discovered their rights in said matters, and denies their averment that it was impossible while said cause was pending upon said original bill, or even before the time of filing said bill of review, for them, or their guardian *ad litem* in said cause, to get possession of said original deed of trust; and denies that they and their guardian *ad litem* were in ignorance of the existence of said deed of trust, or without the means of knowledge of the existence of said deed of trust; and also denies that the complainants in said bill of review, had, at the time of filing said bill of review, had then lately discovered that a decree had been entered said original bill.

This defendant further answering saith, that at the time of filing said original bill of complaint by said Frank C. Taylor and Maria L. Taylor, his wife, namely: upon said 30th day of January, 1873, the said Frank C. Taylor and his said wife and the complainants in said bill of review constituted and ever since have and do now constitute one family, the complainants in said bill of review being the minor children of said Frank C. and Maria L. Taylor, and residing with them, said minors having no other guardians of their person or estate than their said parents, and their said parents not then being and never having been made guardians of the person or estate of said children by appointment of any court.

And this defendant, further answering, saith that at the time of the great fire in Chicago, which occurred upon the 8th and 9th days of October, 1871, the said Frank C. Taylor and his wife occupied as a homestead certain premises situate upon the corner of Dearborn and Maple streets, in the city of Chicago, and said county of Cook, being a part of block 16, of Bushnell's addition to Chicago, bounded and described as follows, to wit: Beginning at a point on the west line of Dearborn street 300 feet north of the southwest corner of said block; thence running north on the east line of Dearborn street 103 feet, more or less, to the northwest corner of said block; thence east on the south line of Maple street 150 feet to an alley; thence south, parallel with Dearborn street, 103 feet, more or less; thence west, parallel with Maple street, 150 feet to the place of beginning; otherwise described as lot 4 of block 16, Bushnell's addition to Chicago. The improvement upon said premises consisting of a dwelling house and certain out buildings, appurtenant thereto, and the complainants in

said bill of review were then living with their said parents upon said premises.

This defendant further answering, saith that the improvements upon said premises were destroyed by said fire, and upon the 26th day of June, 1872, the said Frank C. Taylor applied to this defendant for a loan of $30,000 for the purpose of building new improvements upon said land, and thereupon this defendant did loan said Taylor said sum of $30,000, and he, the said Taylor, made his promissory note for that amount, dated June 26, 1872, and payable to the order of George W. Newell, treasurer (he then being treasurer of this defendant), at the office of this defendant in Pawtucket, Rhode Island, and to secure the payment of said note, the said Frank C. Taylor and his wife executed a trust deed to Edward Brown, conveying the above described premises, which trust deed was duly acknowledged and recorded in the recorder's office in and for said Cook county, upon July 9, 1872, in book 111, on page 272.

This defendant, further answering, saith that at the time of making said application and said loan, this defendant was engaged in the banking business at Pawtucket, aforesaid, and said Frank C. Taylor was engaged in the banking business in said city of Chicago, he then being the vice-president of the Fourth National Bank in said Chicago; that this defendant had made a few loans in said Chicago and said Taylor had, as the agent of this defendant, placed all of said loans and attended to the securities therefor; that this defendant had no knowledge of the manner of doing business in Chicago, but had entire confidence in the ability and integrity of said Taylor, and left to him all matters connected with the security for loans made through him as such agent; that it was the usual course of business between this defendant and said Taylor in making said loans for said Taylor to draw on this defendant for the amount of the loan after the application for such loan had been accepted, and after such draft had been paid by this defendant then to send to this defendant the notes for such loan and the trust deed or mortgage securing the same. That said Taylor sometimes sent to this defendant such notes and trust deed or mortgage and opinion of title made by some lawyer in Chicago, employed by said Taylor; but this defendant did not employ any lawyer to examine the title on such loans, and did not know that it was usual in making such loans in Chicago to have the opinion of some attorney on the title of the security; that said Taylor never sent to this defendant an abstract of title in connection with any such loan, and this defendant did not know that any such thing was used in making such loans, the same not being in use in the state of Rhode Island, and this defendant having had no experience in the same. That this defendant implicitly trusted to said Taylor to furnish to this defendant securities for its loans which should be prepared and vouched for in accordance with the usual course of such business in Chicago, and that said Taylor would see to it that this defendant's loans were made on property of sufficient value, and that trust deeds or mortgages given to secure the

same conveyed as security for such loans the fee simple absolute of the premises on which such loans were made; and this defendant believed, as it still does believe, that said Taylor was sufficiently familiar with the manner of doing such business in Chicago to properly protect the interest of this defendant in such loans and see that it had proper securities as aforesaid;and this defendant relying entirely on the integrity and ability of said Taylor, was accustomed to receive from him such securities as he forwarded for loans made for this defendant without questioning their regularity or sufficiency.

And this defendant, further answering, saith that after the application of said Taylor for said loan of $30,000, was accepted by this defendant, said Taylor forwarded to it his note for said sum, and subsequently the trust deed securing the same, and received said sum of money at different times as he called for the same, receiving a part thereof before said trust deed was forwarded to this defendant, said Taylor did not forward to this defendant any abstract of title nor any opinion upon the title of said real estate, but the whole business of such loan was conducted between this defendant and said Taylor in the manner usual between them in such matters; and this defendant relying entirely on the integrity and ability of said Taylor, as it had done in all such matters, received from him said trust deed and note, believing that said trust deed conveyed for the purpose of securing said note the fee simple absolute to the premises described therein, and that everything had been done by said Taylor to properly protect the interests of this defendant, and there was nothing in said transaction to excite the suspicion of this defendant, or to shake its confidence in said Taylor.

This defendant, further answering, saith that the said Frank C. Taylor, after the making of said loan by this defendant as aforesaid, proceeded to improve the above described premises by erecting thereon five stone front dwelling houses, each three stories and basement in height, and in making such improvements used the money loaned to him by this defendant as aforesaid, and said improvements were made and completed at an expense, as this defendant has been informed and believes, of more than $53,000.

This defendant, further answering,saith that upon the 13th day of June, 1873, this defendant still being in the banking business in Pawtucket aforesaid, the said Frank C. Taylor still being the agent for this defendant at Chicago, as aforesaid, and still having the entire confidence of this defendant, applied to this defendant for a loan of $36,000 for five years, with interest at the rate of nine per cent. per annum, payable semi-annually, such loan to be substituted for the aforesaid loan of $30,000, which was to come due on the 27th of June, 1873, with accrued interest thereon, and to be secured upon four of said five stone front houses, with the land appurtenant thereto, and represented to this defendant that said four houses and land were worth not less than $68,000, and that the same were occupied as residences at a rental at $6,500 per annum, and said Taylor requested this defendant to divide said loan of $36,000 into four parts

of $9,000 each, and this defendant, in accordance with the request of said Taylor, did substitute for said loan of $35,000, a loan for five years for $36,000, and did pay to said Taylor the difference between said sum of $36,000 and said sum of $30,000 with accrued interest as aforesaid, and the said Taylor forwarded to this defendant, to evidence such new loan, four notes, each for the sum of $9,000 dated August 23, 1873, and payable five years after that date to the order of this defendant, with interest at the rate of nine and one-half per cent. per annum, payable semi-annually, and did also forward with each of said notes ten interest notes, being the same date, payable to the same order, and evidencing the interest upon said principal notes at the rate aforesaid until the maturity thereof, all which notes, both for principal and interest were signed by Frank C. Taylor and said Maria L. Taylor, and by Charles H. Mulliken, trustee; and said Taylor also forwarded to this defendant for four deeds of trust, one to secure each of said principal notes with the coupons or interest notes belonging thereto, all bearing date August 23, 1873, all executed by the said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, one conveying lot one in the subdivision of lot four in block sixteen of Bushnell's addition to Chicago, recorded in the recorder's office of said Cook county, in book of records 303, upon page 227; another conveying lot 2 in the subdivision aforesaid, and duly recorded in said recorder's office in book 306, of records, upon page 207; another conveying lot 4 in the subdivision aforesaid, and duly recorded in said recorder's office in book 242 of said records, upon page 614, and another conveying lot 5 in the aforesaid subdivision, and recorded in the recorder's office aforesaid, in book 242 of records upon page 609, all which lots are a part of the premises first hereinbefore described; said premises having been subdivided by the said Frank C. Taylor or said Ira Scott, into five lots, four of which, with four of said stone front residences, were conveyed by the aforesaid four trust deeds as security for this defendant's said loan of $36,000.

This defendant further answering, saith that said four trust deeds, last mentioned, were all made to Francis S. Howe, as trustee, and in each and all thereof Edward W. Russell was named as successor in trust.

This defendant, further answering, saith that upon or about the 1st day of January, 1874, said Frank C. Taylor gave to this defendant a certain other promissory note for the sum of $2,875, made by the said Frank C. Taylor, dated January 1, 1874, and payable to the order of this defendant two years after that date, with interest at the rate of 10 per cent. per annum, payable semi-annually, and to evidence said interest, also gave to this defendant four coupon notes bearing the same date, and payable to the same order and executed by said Frank C. Taylor, and did also give to this defendant, to secure said principal note and said interest notes or coupons, a certain deed of trust also bearing date January 1, 1874, executed by said Frank C. Taylor, by Maria L. Taylor, his wife, and by Charles A. Mulliken, trustee,

which trust deed conveyed to said Howe lots one, two, four and five aforesaid, and was duly acknowledged and recorded in said recorder's office in book 338 of records, upon page 159.

And this defendant, further answering, saith that it was expressly provided in each of said trust deeds that in case of default in any of the payments of the principal or interest which each deed was given to secure, the whole of the principal sum thereby secured and the interest thereupon should at the option of the legal holder of the notes by which such indebtedness was evidenced become at once due and payable, and the premises conveyed by such trust deed might be sold in the same manner and with the same effect as if said indebtedness had matured; and upon the 28th of June, 1876, this defendant then being, as it now is, the owner and holder of said trust deeds and of the principal and interest notes secured thereby, and default having then been made on the payment of coupons numbered three, four and five, attached to each of said principal notes of $9,000, which coupons became due as follows: Four on February 23, 1875; four on August 23, 1875, and four February 23, 1876, this defendant did declare the principal of each and all of said notes of $9,000 due and payable, and default then having been made in the payment of the two last matured coupons attached to said principal note for $2,875, and said principal note having itself, by its terms, become due and payable, this defendant did, upon the last mentioned day, file in the Circuit court of the United States for the Northern district of Illinois its certain bill of complaint against said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Francis S. Howe, trustee, Edward W. Russell, successor in trust, and certain other defendants, for the foreclosure of said trust deeds and the sale of the premises conveyed thereby for the satisfaction of the indebtedness to this defendant thereby secured.

And this defendant, further answering, saith that the complainants in said bill of review have been served with process in said cause instituted by this defendant in said Circuit court of the United States, and before the filing of their said bill of review, a guardian *ad litem* had been appointed by said Circuit court of the United States, to appear and answer this defendant's said bill of complaint on behalf of the complainants in said bill of review, and said guardian *ad litem* had filed an answer to said bill of this defendant, and issue had been joined thereon and said cause had been referred to the master in chancery of said Circuit court of the United States, and proofs had been taken thereon, both on behalf of this defendant as complainant in said cause and on behalf of the defendants in said cause.

And this defendant, further answering, saith that since the filing of said bill of review, this defendant has by leave of the court, had and obtained, filed its supplemental bill in said cause in said Circuit court of the United States, setting up fully the interest of this defendant under the aforesaid trust deed to Francis S. Howe, setting up also the proceedings heretofore had in this cause upon the original bill of

complaint filed herein, and the filing of the bill or review herein, and also setting up the alleged discovery by the complainants in said bill of review of the original deed of trust from said Frank C. Taylor and Maria L. Taylor, his wife, to Ira Scott, and praying, amongst other things, that an account may be taken under the direction of said court of what is due and owing to this defendant for principal and interest on said notes and coupons, and on account of taxes paid by this defendant, and that in default of payment of the same by the defendants to said bill, or some of them, that said premises may be sold to satisfy the amount found due to this defendant; or if that court shall find that the interest of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor and Robert C. Taylor is not conveyed by said trust deed to Francis S. Howe, then, that in default of such payment of the amount found due to this defendant, that the interest of said Frank C. Taylor and Maria L. Taylor, under said trust deed to Ira Scott, be first sold under the direction of this court, and the proceeds of such sale applied to the payment of the amount found due to this defendant, and if such sale shall fail to satisfy the amount due to this defendant, then that said court order Charles H. Mulliken, as trustee, to sell so much of the interest of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor and Robert C. Taylor in said premises as shall be necessary to satisfy the balance then remaining unsatisfied of the amount found due to this defendant by said court.

This defendant, further answering, saith that the proceedings instituted by this defendant in said Circuit court of the United States are still pending upon said original and supplemental bill filed by this defendant; that said court has complete jurisdiction of the matters and things contained in said original and supplemental bills, and prior to the filing of the aforesaid bill of review said Circuit court of the United States had acquired jurisdiction of the persons of said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, and a summons has now issued from said court in said proceedings against the said Robert C. Taylor, commanding him, amongst other things, to appear and answer said original and supplemental bills, said Robert C. Taylor having been born since the filing of said original bill by this defendant, and having been made a party to said proceedings by said supplemental bill.

This defendant, further answering, saith that on the 23rd day of July, 1873, said Frank C. Taylor, and Maria L. Taylor, his wife, filed in this Honorable court a certain bill of complaint in which they set up that said Maria L. Taylor is the owner of the premises first hereinbefore described, and the making of said trust deed to Ira Scott, and the record thereof substantially as the same were alleged in the original bill of complaint herein, to which bill filed on said July 23, 1873, they attached and made a part thereof as an exhibit an instrument identical with that attached as an exhibit to their original bill of complaint herein, and which they again aver to be a substantial copy of the original trust deed made by them to Ira Scott as aforesaid; said

complainants in said last mentioned bill further allege that by the terms and provisions of the said trust deed to Ira Scott made by them as aforesaid, it was amongst other things provided that said Scott, as successor in trust, might build upon and improve said premises or any part of the same, for the purpose of deriving revenue therefrom, and might borrow money for the purpose of making such improvements and secure the payment of the same by executing on said premises, or any portion thereof, mortgages or trust deeds, and also might sell a portion of said premises for the purpose of raising funds to improve said trust estate; and further allege that up to the time of the great fire of October 8 and 9, 1871, said premises had been occupied by the complainants in said bill as a homestead; that the improvements thereon, consisting at the time of said fire of a residence and out-buildings, were totally destroyed by said fire; that said complainants were by such destruction left without a home, and suffered in consequence of such fire other large pecuniary losses, so that they were unable suitably to provide for their necessary wants, and those of their children, and pay the taxes and assessments laid on said premises without in some way making said trust estate available as a source of revenue; and further allege that said premises were situated in a portion of Chicago, that had been prior to said fire, and still continues to be, valuable for residence purposes, and that the best judgment of said Frank C. Taylor and his said wife demanded that said premises should be improved by the erection thereon of a block of five first class residences; that inasmuch as said original deed of trust and old copies and records thereof had been destroyed by said fire, said Ira Scott declined, though requested by the complainants in said bill, either to sell any portion of said premises, or to borrow the necessary funds for the said improvements or to execute a mortgage to secure any such loan until the term of said trust should be fully restored by the decree of some court having competent jurisdiction of such matters. And further allege that the delay necessary to procure the decree establishing the terms of said trust would have operated greatly to the prejudice and damage of said trust estate; that therefore, to protect and preserve said trust estate, said Frank C. Taylor, as the agent of his wife, said Maria L. Taylor, and at her request, borrowed a large sum of money, and with the same erected on said premises for the benefit of said trust estate a block of five fine marble front residences, one of which said complainants were at the filing said last mentioned bill, occupying with their family as a homestead, under the terms of said trust; and the said complainants in said last mentioned bill further therein allege that said improvements were a wise and judicious improvement of said trust estate, and that in making the same they had laid out and expended on said premises for the benefit of said trust estate the sum of $53,700, for which they held on account of said trust estate the usual and proper vouchers; and further allege the rendering of the decree upon the original bill of complaint therein, and that in and by said deed of trust it was provided that any court of said Cook county might in case of the refusal

to act of the trustee and successor in trust in said instrument named, appointed a successor in trust to be vested with all the powers and subject to all the limitations conferred and imposed upon the said Ira Scott by the aforesaid instrument. And further allege that the said Ira Scott, the trustee named in said trust deed, and the said Francis B. Peabody, the successor in trust therein named, had both resigned, and said complainants in said last mentioned bill prayed that the said Superior court of Cook county proceed to appoint a successor in trust to said Scott and Peabody under said deed of trust, and that said court should ascertain and determine by full and proper accounting the value and cost of the improvements made upon said premises by the said complainant, and that said trustee to be appointed by said court should be authorized from the sale of said premises or from any loan made for that purpose, to pay and discharge all claims of any persons against said trust estate on account of said improvements, not exceeding the fair value and cost of such improvements as found by said court.

This defendant, further answering, saith that said last mentioned bill of complaint was duly sworn to by said Frank C. Taylor, one of the complainants therein; that since the filing of said original bill of complaint herein by said Frank C. and Maria L. Taylor, and before the filing of said last mentioned bill of complaint by them, another child, named Alexander Taylor, had been born to them, and said Alexander Taylor, together with said Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor, were made defendants, and were the only defendants, to said last mentioned bill of complaint.

This defendant, further answering, saith that all the defendants to said last mentioned bill of complaint, except said Scott and said Peabody, were infants, that a guardian *ad litem* was duly appointed for said infants and an answer filed by them, in the usual form, submitting the rights of said infants to the protection of said court; that upon August 6, 1873, said Scott and Peabody were defaulted, and reference of said cause was made to a master in chancery of this court; that upon the 19th day of August, 1873, the report of said master was duly filed in said cause, and upon the same day a decree was rendered by said court in said cause, in which, amongst other things, said court decrees, that Exhibit A, attached to said bill of complaint, and being the same as the exhibit attached to the original bill of complaint herein, is a correct copy of the original deed of trust, of said Ira Scott; that by the terms of the said deed of trust, said Scott and his successors in trust were authorized and empowered to build upon and improve the premises conveyed thereby, or any part of the same, for the purpose of deriving a revenue therefrom, and to borrow money for the purpose of making such improvements, and to secure the payment of the same, by executing on said premises, or any portion thereof, mortgages or deeds of trust, and further that said Scott and his successors in trust were by said deed of trust authorized to sell a portion of said premises for the purpose of raising funds to improve

said trust estate; and this court did by said decree further find that said Frank C. Taylor and Maria L. Taylor were losers to such an extent by said great Chicago fire, that they could not suitably provide for their necessary wants and those of their children, and pay the taxes laid and assessed upon said premises, without in some way making said trust estate available as a source of revenue; that said premises were situated in a portion of said city of Chicago, that had been and continued to be valuable for residence purposes, and that good, careful and judicious management of said trust estate, for the best interest of all concerned therein, required that said premises should be improved by the erection thereon of a block of five first-class residences, and that by the said fire, the said trust conveyance to Ira Scott, and all the public records of the same, were totally destroyed, that no copy of said trust conveyance was preserved, that the abstracts, minutes, copies of abstracts and records of same concerning said trust conveyance, which were preserved from the said fire, were very meager and only showed the trust conveyance by giving the names of said Frank C. Taylor and Maria L. Taylor, as grantors, and said Ira Scott, as grantee, the description of the property conveyed date of conveyance, the date, book and page of the record thereof, and only described said conveyance as a deed of trust, there being no reference whatever to the terms of such trust; and this court did by said decree further find that, to protect and preserve said trust estate for the best interest of all concerned, the said Frank C. Taylor, as the agent of his wife, the said Maria L. Taylor, and at her request, had borrowed a large sum of money, and with the same erected on said premises for the benefit of said trust estate, a block of fine marble front residences, and that said improvements were a wise and judicious improvement of said trust estate; and the said Maria L. Taylor, through said Frank C. Taylor, as her agent, had laid out and expended in making said improvements, the sum of $53,700, and that sum was judiciously and wisely expended, and that said improvements were fairly worth said sum; and this court did further, by said decree, order that Charles Mulliken, of said city of Chicago, be and he was by said decree appointed as successor in trust of said Ira Scott and Francis B. Peabody, under said trust conveyance to said Scott and Peabody, and in accordance with the terms thereof, for the uses and purposes therein expressed; this court did by said decree, authorize and empower said Mulliken, as said trustee, thereby appointed, out of any funds raised from the sale of said premises or from any part thereof, or from any loan made for that purpose, to pay and discharge said Frank C. Taylor and Maria L. Taylor, all the costs of said improvements so, as aforesaid, advanced and paid by them or either of them, not to exceed in amount the sum of $53,700.

This defendant, further answering, saith that the premises first herein described and described in and conveyed by said deed of trust, by Frank C. Taylor and Maria L. Taylor to Ira Scott, were purchased by said Frank C. Taylor, and paid for by him with his own means; that the conveyance of the same to Maria L. Taylor

was made without any consideration from the said Maria L. Taylor, and only for the consideration paid by the said Frank C. Taylor; and said premises were conveyed by the said Frank C. and Maria L. Taylor to the said Ira Scott in trust, without any consideration from either of the *cestuis que* trust in said trust deed. That at the time of the appointment of the said Mulliken as trustee, as aforesaid, he, said Mulliken, held some office under Frank C. Taylor, the appointment of which was controlled by said Taylor, and the said Frank C. Taylor, prior to the time of the appointment of said Mulliken as trustee, as aforesaid, and after that time, and up to the time of the appointment of the receiver by the United States Circuit Court, upon the bill filed by this defendant as aforesaid, continued to manage and control all of the property described in said trust deed to Ira Scott, as aforesaid, as if the same was his own, leasing parts of the same, receiving rents therefor and mingling the same with his own moneys received from other sources, paying the taxes thereon, and in all respects treating the said trust estate as if the same belonged to him absolutely free and discharged from all the trust and conditions, and neither said Scott, said Peabody or said Mulliken ever performed any act or duties whatever as trustee in connection with such estate or any part thereof.

This defendant, further answering, saith that the averments made by said Frank C. Taylor and Maria L. Taylor, in their said last mentioned bill of complaint, filed in this Honorable court, to the effect that the said Frank C. Taylor, as the agent of said Maria L. Taylor, to preserve and protect said trust estate was obliged to borrow and did borrow a large sum of money for the improvement of said trust estate, refer to the loan of $30,000 made by this defendant to said Frank C. Taylor, and secured by the trust deed to Edward Brown as hereinafter recited.

This defendant, further answering, saith that the original bill of complaint filed herein was a bill or petition filed under what is generally known as the "Burnt Record Act," for the purpose of establishing the title to the premises therein and hereinbefore first above described, and this court did by the decree rendered upon said original bill establish the title to said premises; that in said bill or petition the aforesaid trust deed to Edward Brown for the use of this defendant, was particularly described, and the title established by this court, by its decree upon said bill or petition, was expressly established subject to the lien of said trust deed and to the rights and interests of this defendant and of said Edward Brown in and to said premises under said trust deed.

This defendant, further answering, saith that the bill of complaint filed by said Frank C. and Maria L. Taylor in this Honorable court upon the 23rd day of July, 1873, as aforesaid, was filed for the express purpose of obtaining a decree that the premises conveyed to Ira Scott, as aforesaid, could be made to pay for the improvements which had been made thereon, and especially for the purpose of providing a way to secure or pay the sum of money which this defendant had advanced to said Frank C. Taylor to assist in making said

improvements, and the decree entered in said cause authorizing and empowering said Mulliken, who, by said decree, was appointed trustee, to pay from any fund arising from the sale of said premises or any part thereof, or from any loan made for that purpose to said Frank C. and Maria L. Taylor, all the costs of said improvements advanced by them was designed to empower said Mulliken to secure the loan of $36,000, for which said Frank C. Taylor had already applied to this defendant, as aforesaid, and which loan was chiefly to be used in paying the $30,000 which said Frank C. Taylor had borrowed of this defendant, as aforesaid, and accrued interest thereon, which last mentioned loan of $30,000 was at the time of the making of said decree overdue and unpaid.

This defendant, further answering, saith that after the rendering, by this Honorable court, of a decree in said last mentioned cause, said Mulliken, in pursuance thereof, the said Frank C. and Maria L. Taylor joining with him, did execute the four trust deeds for $9,000 each, hereinbefore described, and said Mulliken and said Taylor did also, in pursuance of said decree, sell and convey one of the houses erected on said premises with the land appurtenant thereto, for the purpose of paying the balance of the cost of said improvements over and above said sum of $36,000 loaned by this defendant as aforesaid.

And this defendant avers that if it had then appeared that by the terms of the said original trust deed to Ira Scott, a part of said premises could be sold for the improvement of the balance thereof, but that the same could not be charged with any incumbrance, it would have been decreed in said cause that said Mulliken should sell so much of said premises as should be necessary to pay the whole amount of the cost of said improvements, and at that time such costs could have been wholly defrayed by the sale of a part of said premises so improved as aforesaid.

And this defendant submits that no order or decree should be made by this Honorable court in the aforesaid bill of review which shall impair or in any manner effect to the prejudice of this defendant the rights and interests of this defendant in said premises under the said trust deeds made in pursuance of the decree rendered by this court upon the bill filed upon the 23rd day of July, A. D. 1873, as aforesaid.

And this defendant, further answering, saith that since it acquired the five trust deeds hereinbefore mentioned, in order to preserve and protect its security under the same, it has paid a large sum of money for taxes upon the premises conveyed by said trust deeds, and that such payments were necessary to prevent said premises being sold for non-payment of such taxes, neither said Frank C. Taylor nor the said Mulliken, as trustee, nor any person interested in said premises other than this defendant having paid any of said taxes or taken any steps to prevent said premises being sold for non-payment of the same. That on or about August 26, 1876, this defendant paid for this purpose the sum of $1,015.34, and on or about September 11,

1876, the further sum of $85.73, and since the filing by this defendant of its bill of complaint in the Circuit court of the United States, as aforesaid, the taxes upon said premises have been paid by the receiver appointed by said court in said cause, and said receiver has also paid out various sums of money, the amounts of which are not now known to this defendant, for repairing and preserving the improvements upon said premises, and for insurance thereon, neither the complainants in said bill of review nor any person acting upon their behalf, having, to the knowledge of this defendant, paid out any sum for preserving or protecting said premises, or for taxes or assessments thereon.

And this defendant, further answering, saith that in the filing of the original bill of complaint herein, and also in filing the bill of complaint filed in this court by said Frank C. and Maria L. Taylor upon July 23, 1873, as well as in making the improvements made upon the aforesaid premises, said Frank C. and Maria L. Taylor were acting for the best interest of the complainants in the said bill of review, and the improvements made by them upon said premises were at the time the same were made, wise and judicious, as said Frank C. and Maria L. Taylor alleged in their said bill of complaint filed in this court July 23, 1873, and as the proof taken upon said cause abundantly shows.

This defendant, further answering, saith that although it was a party defendant to the original bill of complaint herein, the only service upon this defendant was service by publication, and this defendant had no actual notice or knowledge of said suit until after it had filed its bill of complaint in the Circuit court of the United States as aforesaid, and until after the filing of such bill it had no knowledge or notice of the terms of the aforesaid deed of trust to Ira Scott, nor did it know that any such deed had ever been made, and the first knowledge gained by the making of such deed was gained from the original bill of complaint herein, and this defendant had no knowledge or notice that it was claimed by any person that the original deed in trust to said Scott differed in terms from the instrument established as such deed by the decree heretofore rendered in this cause until at or about the time of the filing of the bill of review herein.

But this defendant avers that, if the instrument now produced by the complainants in said bill of review, and by them alleged to be the original deed in trust to said Scott, is in truth and fact such original deed, the same was at the time of the filing of the original bill herein, and ever since, has been in the custody and control of the said Frank C. and Maria L. Taylor, and has been held by them, not only for themselves, but as the representatives and natural guardians of their minor children, and by withholding the same from the knowledge of this defendant, and concealing from this defendant the fact that any such trusts existed, the said Frank C. and Maria L. Taylor have succeeded in obtaining from this defendant the sum of $36,000 as aforesaid, all of the same has been expended for the benefit of the

*cestuis que trust*, under said alleged original deed of trust, namely, the said Frank C. Taylor and Maria L. Taylor, and their infant children, in making aforesaid improvements.

This defendant, further answering, saith that at the time it filed its original bill of complaint in the United States Circuit court as aforesaid, said premises conveyed by said five deeds in trust had so largely depreciated in value that this defendant then believed and still believes said premises were and still are insufficient security for the indebtedness to this defendant, secured thereon as aforesaid, and the amount paid and expended by it for taxes as aforesaid.

And this defendant avers that the said Frank C. Taylor and the said Maria L. Taylor, his wife, having failed by any other means to defeat the proceedings instituted by this defendant in the Circuit court of the United States as aforesaid, finally produced the alleged original deed of trust to Ira Scott as aforesaid, and have caused their infant children, complainants herein, and who are entirely under the influence, control and discretion of said Frank C. and Maria L. Taylor, to file their bills of review herein, and also a bill of review in the other aforesaid cause in this Honorable court, and by said bills of review the said Frank C. and Maria L. Taylor, acting for themselves and for their children as aforesaid, seek to set aside the decree heretofore rendered by this honorable court in said causes, and to cause decrees to be entered which shall deprive this defendant of all security for moneys loaned by it as aforesaid, and which have been expended for the benefit of said Frank C. and Maria L. Taylor, and their infant children as aforesaid, and thereby, in the names of their children to perpetuate a fraud upon this defendant.

And this defendant, further answering, saith, that since the filing of the original bill herein, two children have been born to the said Frank C. and Maria L. Taylor, namely: Alexander Taylor and Robert C. Taylor, both of whom are made parties defendant to the bill of review herein; that the interest of said Alexander and Robert C. Taylor is the same as the interests of the complainants in the said bill of review, and said bill of review is filed by the direction of said Frank C. and Maria L. Taylor, in the interest of said Alexander and Robert C. Taylor, as well as in the interests of themselves and said complainants.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable court shall direct, and it humbly prays to be hence dismissed with its reasonable cost and charges in this behalf most wrongfully sustained.

THE FRANKLIN SAVINGS BANK,

By W. H. SWIFT,

*Its Attorney.*

GRANT & SWIFT,

*Solicitors.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 11," the summous issued by the Superior court of Cook county, in the cause number 44,331, in which cause the bill in chancery has already been introduced as complainants' "Exhibit No. 4," which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

*The People of the State of Illinois to the Sheriff of said County, Greeting:*

We command you that you summon Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, if they shall be found in your county, personally to be and appear before the Superior court of Cook county, on the first day of the term thereof, to be held at the court house, in Chicago, in said Cook county, on the first Monday of August next, to answer unto Frank C. Taylor and Maria L. Taylor, in their certain bill of complaint, filed in the said court, on the chancery side thereof.

And you have then and there this writ, with an endorsement thereon, in what manner you shall have executed the same. Witness, August Jacobson, clerk of our said court, and the seal thereof, at Chicago, aforesaid, this 23d day of July, A. D, 1873.

[OFFICIAL SEAL.] A. JACOBSON,
*Clerk.*

[Endorsed]: Served this writ on the within named Ira Scott, Maria Louise Taylor, by reading and delivering a copy thereof to each of them this 24th day of July, 1873; also served this writ on the within named Frank C. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, by reading the same and delivering a copy thereof for each of them at usual place of abode to Adelpena Peterson, she being a member of the family and over the age of ten years, this 24th day of July, 1873.

F. M. BRADLEY,
*Sheriff.*

By H. SPEARS,
*Deputy.*

Fees, $3.10. Paid.

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit 12," the order of the Superior court in said last mentioned cause, entered August 6, 1873, which is as follows:

Frank C. Taylor, *et al.*,
1836
44331 *vs.*
Ira Scott, *et al.* } *Bill.*

This day come the complainants to this suit by Howe & Russell, their solicitors, and it appearing to the court that due personal service of process of summons issued in this suit has been had on the said defendants, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, for more than ten days before the first day of the term, and it appearing to the court that said defendant, Francis B. Peabody, has in writing entered his appearance by R. C. Hall, his solicitor, waiving service of process of summons issued in this cause, as required by the statute in such case made and provided, on motion of complainant's solicitor it is ordered by the court that the defendants, Ira Scott and Francis B. Taylor, be and they are hereby required to plead, answer or demur instanter to the bill of complaint filed in this cause, and no plea, answer, demurrer, or other matter of defense being interposed herein by said defendants Ira Scott and Francis B. Peabody, and they being now here three times solemnly called in open court, came not, nor does any person for them, but herein they make default, which is, on motion, ordered to be taken, and the same is hereby entered herein of record. And it is ordered by the court that said bill of complaint, and the matters and things therein stated and charged be, and the same are hereby taken, *pro confesso*, by and against said defendants, Ira Scott, and Francis B. Peabody, for want of their appearance and answer thereto. And it appearing to the court that the defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor are minors under age, on motion of said complainant's solicitor it is ordered by the court that Nicholas A. Lauer, Esq., be, and he is hereby appointed guardian *ad litem* for said infant defendants, above named, to appear and defend this suit in their behalf. And thereupon comes the said Nicholas A. Lauer, and accepts his appointment as such guardian *ad litem*, and filed herein the answer of said infant defendants, neither admitting or denying any of the matters and things stated and charged in the bill of complaint filed in this cause, but requiring strict proof thereof. On motion of complainant's solicitor it is ordered by the court that this cause be, and the same is hereby referred to Benjamin D. Magruder, Esq., one of the masters in chancery of this court, to take the proofs herein and report the same to this court with his opinion on the law and evidence with all convenient speed.

By Mr. SWIFT: I offer in evidence as defendant's "Exhibit 13," the report of the master in said cause, with the depositions and appearances accompanying the same, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

SUPERIOR COURT OF COOK COUNTY.

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor. } *In Chancery.*

TO THE HONORABLE THE JUDGES OF THE SUPERIOR COURT OF COOK COUNTY:

In pursuance to a decretal order, entered in the above entitled cause by which it was referred to the subscriber, one of the masters in chancery of this court, to take the proofs herein and report upon the issues of the law and fact involved in this cause, I, the said master, do respectfully report that I have taken proofs on the part of complainants in this cause, and that the same are hereto subjoined and made a part of this report.

And from the evidence thus taken, I find:

That on the 13th day of June, A. D. 1871, Maria L. Taylor, wife of Frank C. Taylor was the owner, seized in fee and possessed of the premises described in the bill in this cause.

That on said 13th day of June, A. D. 1871, the said Maria L. Taylor, and Frank C. Taylor, made, executed and delivered to Ira Scott as trustee, the deed of conveyance of which a copy is attached to said bill and marked "Exhibit A," which said deed was filed for record and recorded as in said bill alleged, and that the powers conferred upon said Scott by said deed are and were as in said bill set forth.

That from June 13th to October 9th, 1871, the said premises, together with the improvements thereon, consisting of a residence and the outbuildings, were occupied by complainants and their family as a homestead under said trust conveyance to said Scott.

That the said improvements and said original trust deed and the public records of Cook county, showing the nature of said trusts, were destroyed by fire on the 9th day of October, 1871.

That for the reasons stated in said bill, the complainant, Frank C. Taylor, acting as agent for and in behalf of his wife, the said Maria L. Taylor, has since the fire erected upon the premises aforesaid, with money borrowed by him, five marble front residences at a cost of about $53,700, and that the erection of said residences was a judicious and proper improvement, and one of them is now occupied by complainants and their family as a homestead.

That a plat of a subdivision of said premises has been made and recorded, as alleged in said bill.

That the payment of the expenses of said improvements *will require the sale of* one or more of said houses and lots.

That said trust conveyance has been restored and established by decree of this court as alleged in said bill.

That the defendants Maria Louise Taylor, Frank C. Taylor, Jr., Josephine S. Taylor and Alexander Taylor are the minor children of the said complainants.

That the said Ira Scott, as trustee, and Francis B. Peabody, as successor in trust, have resigned their positions under said trust deed, and that Charles H. Mulliken is a suitable and proper person to be appointed their successor therein and vested with the same title and powers as are conferred on them by said deed.

That the value of the improvements so as aforesaid put upon said premises is the sum of about $53,700.

That all the material allegations of the bill complaint in this cause have been sustained by the proof herein, and the prayer of said bill should be granted.

All of which is respectfully submitted.

Dated August 14, 1873.

BENJAMIN D. MAGRUDER.

*Master in Chancery of the Superior Court of Cook County.*

I hereby enter my appearance at taking of testimony in the above cause before B. D. Magruder, Esq., master in chancery of said court at his office on the 12th and 14th days of August, 1873.

NICHOLAS A. LAUER,

14-8-'73.

*Guardian ad litem of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor.*

"EXHIBIT C."

*To Maria L. Taylor and Frank C. Taylor:*

I do hereby notifiy you of my resignation as trustee under the deed of trust executed by you to me on the 13th day of June, 1871, and afterwards on the 15th of the same month recorded in the office of the recorder of deeds of said Cook county, in the state of Illinois, in book 673, at page 1, as I have this day resigned all of the trusts and powers imposed upon me by said trust conveyance.

Dated at Chicago, July 21, 1873.

Respectfully yours, etc.,

IRA SCOTT.

"EXHIBIT D."

*To Maria L. Taylor and Frank C. Taylor:*

I do hereby notify you of my resignation as trustee under the deed of trust referred to in the annexed and preceding communication of Ira Scott, Esq., wherein I was named as a successor in trust in case of the resignation of the said Scott as such trustee. I have this day immediately upon the resignation of said Scott, resigned all the trusts imposed upon me by said trust conveyance and the said resignation of said Scott.

Dated at Chicago, July 21, 1873.

Respectfully yours,

FRANCIS B. PEABODY.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

SUPERIOR COURT OF COOK COUNTY.

IN CHANCERY.

Frank C. Taylor, *et al.*, }
*vs.* }
Ira Scott, *et al.* }

The depositions of witnesses produced, sworn and examined on the part of the complainant in the above cause, taken before me, Benjamin D. Magruder, master in chancery of said court, at my office in Chicago on the 12th and 14th days of August, A. D. 1873, pursuant to an order of reference therefore entered in said cause, the complainants appearing in person and by their solicitor, Mr. Russell, no one appearing for defendants.

FRANK C. TAYLOR, a witness produced, sworn and examined on the part of complainants, deposes and says:

My name is Frank C. Taylor. I reside in Chicago, Cook county, state of Illinois, and am the husband of Maria L. Taylor. On the 13th day of June, A. D. 1871, said Maria L. Taylor, my wife, was seized and possessed in fee simple of the following described premises, namely: All that part of block of 16 in Bushnell's addition to Chicago, commencing at a point on the east line of Dearborn street 300 feet north of the southwest corner of said block; running thence north on said east line 103 feet to the northwest corner of said block; thence east on the south line of Maple street 150 feet to an alley; thence south parallel with Dearborn street 103 feet; thence west 150 feet to the place of beginning, said premises being the same as lot 4, in block 16, in Bushnell's addition to Chicago, according to the plat of subdivision of block 16, Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, and being so seized and possessed of said premises, my wife, the said Maria L. Taylor, joining with me, made, executed, acknowledged and delivered to Ira Scott, of the city of Chicago, in the county of Cook and state of Illinois, and his successor and successors in trust, a certain deed of conveyance of the

premises which I have just described, which deed was on the 15th day of June, 1871, recorded in the office of the recorder of deeds of said Cook county, in book 673, at page 1. There is a copy of this deed attached to the bill in this cause and marked "Exhibit A." By the said deed so executed by my wife and myself to Ira Scott the premises which I have described were conveyed to said Scott and his successor in trust to be held and managed by him and them in trust for the benefit of myself and wife or children and my devisees and legatees. Said trust deed authorized said Scott among other things, and his successors in trust, to build upon and improve said premises, or any part of the same, for the purpose of deriving a revenue

Said Scott and his successors in trust were also authorized to borrow money for the purpose of making improvements upon said premises. And were authorized to secure the payment of any money so borrowed by executing on said premises, or any portion thereof, mortgages or trust deeds, or to sell portions of said premises for the purpose of raising funds to improve the trust estate. The "Exhibit A," attached to the bill in this cause shows all the conditions and terms of the trust. From the time that we conveyed the said premises to Mr. Scott, as trustee, until the fire of October 8 and 9, 1871, my wife and our family occupied the said premises as a homestead, in accordance with the provisions of the terms of said trust conveyance. The improvements on the property at that time were a dwelling house, our residence and the outbuildings connected with the same. All the improvements on said premises were destroyed by the great fire of October, 1871, and Mrs. Taylor and myself and family were left without a home. Both Mrs. Taylor and myself were losers by the fire in other ways than in the destruction of the property in question. By the same fire, the said trust conveyance to Scott, and all the public records showing the nature of said trust were destroyed, and no copy of said trust conveyance was preserved. Our losses by the fire were so great that we could not suitably provide for our necessary wants and those of our children and pay the taxes on said premises, without in some way getting the premises in some way to bring in revenue.

Said premises were situated in that part of the city that had been, and continued to be desirable for residence purposes, and the property being unproductive, and our other resources and income being cut off by the fire, Mrs. Taylor and myself decided that the best way to make the property productive would be to build a block of five first class residences, and as all the records showing the nature of the said trust conveyance to Scott and all the copies of the same were destroyed, the said Scott, when requested to borrow money to make such improvements, or to execute a mortgage to secure any such loan refused to do the same until said trust should be fully restored by the decree of some court.

The delay necessary to procure such decree would have been very detrimental to the property. All the abstracts, minutes and copies and extracts of and concerning said trust conveyance which were

preserved from the said fire were very slight. They only showed the trust conveyance by giving the names of myself and wife as grantors, and the said Scott as grantee, describing the property conveyed in the said deed and the date of the conveyance and the date, book and page of the record thereof, and the only other memorandum concerning the same, are that it was a deed of trust, and no reference whatever to the terms and conditions of said trust conveyance, and the condition of the records and abstracts showing the title to said trust estate, were such that it was utterly impossible for Mr. Scott, as such trustee, either to sell and convey any portion of said premises, or to borrow any money upon the same as security. Under that condition of things, I, as the agent of my wife, Maria L. Taylor, and at her request, borrowed large sums of money and erected on said premises, for the benefit of said trust estate solely, using my best judgment, and upon consultation with other, a block of five fine marble front residences. My wife, with our family, now occupies one of those residences as a homestead, in accordance with the terms of said trust conveyance.

The improvements which we put up there are judicious, and a valuable addition to the trust estate, and necessary to its preservation.

The buildings and improvements on said premises have cost, and we have paid and expended on the same the sum of $53,000, and we hold the proper vouchers for the same. These premises are on the southeast corner of Dearborn and Maple streets, in the city of Chicago.

My wife and myself, and said Scott, joining as such trustee, made, and on the 5th day of July, A. D. 1873, recorded in the recorder's office of Cook county, in book 5 of maps, on page 4, in said county, a plat of the subdivision of said premises. The fire has so changed the condition of things that with the large expenditures in improving the said premises it is necessary that one or more of said houses and the lots on which they stand should be sold and the funds derived from such sale should be used in paying for said expenses made in such improvements.

On the 3rd day of March, A. D. 1873, a decree of the Superior court of Cook county was entered on the chancery side thereof, restoring the title to said trust estate and establishing the said trust conveyance to have been the same as "Exhibit A," attached to the bill in this case. Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor are all the children of my wife and myself. The said deed of trust to Ira Scott, provided also that in the event of the death or inability or refusal to act or removal from the state of the said Ira Scott, then Francis B. Peabody, of the city of Chicago, should become his successor in trust under said deed, and that thereupon all the title to said trust estate not theretofore conveyed by the said Ira Scott should at once become vested in the said Peabody as successor in trust under said trust conveyance. It further provided that in case of the death, inability to act or removal from the state of the said Francis B. Peabody, then

upon application of one or more of the *cestuis que* trust being made to any court of record, such court might appoint a successor in trust under such trust deed, and that thereupon the person appointed successor in trust should be invested with all the powers therein and thereby conferred on and subject to all the limitations thereby imposed on said Ira Scott, his successor or successors in trust, and all the trust estate held by his predecessors under said deed should at once become fully vested in him as successor in trust for the use and purpose therein expressed, as all this will be shown by "Exhibit A." Said Ira Scott, on the twenty-first (21st) day of July, A. D. 1873, resigned said trusteeship and all the trusts imposed upon him by said deed of trust, and thereupon Francis B. Peabody also resigned the said trusteeship, and all the trusts imposed upon him by said deed of trust as successor of said Scott.

At the time the improvements which I have spoken of were contemplated and commenced, the property on which they were erected and the adjoining property was in such a condition that it would have largely depreciated in value if it had not been improved by the erection of fine residences. We were not, without the benefit of this property, in condition to be enabled to suitably support and provide for our family. I have devoted a great deal of time to the superintendence of the improvements, and they are actually worth to the trust estate all of the money that we have paid and expended for the same. It has all been done under the instructions and directions of my wife and myself, and with her entire approval. I herewith introduce in evidence the written resignation of Ira Scott and Francis B. Peabody as "Exhibits B and C." The architects of the building are F. and E. Baumann. Mrs. Taylor and myself desire Charles H. Mulliken to be appointed as successor in trust to Ira Scott F. B. Peabody. I know Mulliken to be a trustworthy, suitable and and proper man as such successor.

FRANK C. TAYLOR.

Subscribed and sworn to before me, }
this 12th day of August, A. D. 1873. }

BENJAMIN D. MAGRUDER,
*Master in Chancery of the Superior court of Cook county.*

Adjourned to August 14, at 10 A. M., when

FREDERICK BAUMANN, a witness produced, sworn and examined on part of the complainant, deposes and says:

My name is Frederick Baumann. I reside at Lake View, Cook county, Ill. I am a member of the firm of F. & E. Baumann. I know Frank C. Taylor and Maria L. Taylor. Our firm was employed by Mr. Frank C. Taylor as architects and superintendents of the block of buildings on the corner of Maple and Dearborn streets, Chicago. We started in on the block in August, 1872, and continued through the winter. There are five residences in the block; four of them are 20x49 and one is 24x60—the one on the corner. They are three-story and basement buildings. They are first-class residences. The fronts are constructed of Athens stone. Stone steps and artificial stone sidewalks. The buildings and improvements are finished in first-class style, and all complete. The entire cost of all of the improvements on the said premises in the erection and completion of the buildings and the appurtenances thereto, we have figured at $53,700. There were, however, fences and sidewalks in front, and curbing and such things Mr. Taylor had done without our interference, and they are independent of that. Mr. Taylor has spent several thousand dollars, independent of the $53,700. The value of those improvements, $53,700. That is the actual cost, and that actual cost I regard a fair value of the improvements at the time the improvments were put there; we had low estimates on the work. The buildings and improvements were economically and judiciously made. They were constructed with reference to having the most equivalent for the money. We didn't figure on any show or gewgaw. It was all serviceable and value improvements.

FREDERICK BAUMANN.

Subscribed and sworn to before me, this 14th day of August, A. D. 1873.

BENJ. D. MAGRUDER,

*Master in Chancery of the Superior court of Cook county.*

Adjourned to August 14, at 2 P. M., at which time

IRA SCOTT, one of the defendants, being produced, sworn and examined as a witness on the part of complainants, deposes and says:

My name is Ira Scott. I am one of the defendants in this cause, and the trustee named in the deed of trust mentioned and set forth in the bill of complaint. At the time of the execution of said deed of trust the complainants occupied the premises described therein as a homestead, and so continued to occupy the same until the great fire of October 8 and 9, 1871, when the dwelling house and barn and all of the improvements on the premises were destroyed by said fire. I had never received any money or proceeds from said trust estate, and have made no disbursements on account thereof.

IRA SCOTT.

Subscribed and sworn to before me, this 14th day of August, 1873.

BENJAMIN D. MAGRUDER,
*Master in Chancery of the Superior court of Cook county.*

I, Benjamin D. Magruder, master in chancery, of the Superior court of Cook county, do hereby certify that previous to the commencement of the examination of the witnesses whose names are subscribed to the foregoing depositions, they were each by me duly sworn according to law, that the same were taken upon oral interrogatories propounded by the solicitor of the complainant, and were subscribed and sworn to by said witnesses, respectively, before me on the 12th and 14th days of August, A. D. 1873.

BENJAMIN D. MAGRUDER,
*Master in Chancery of the Superior court of Cook county.*

Master's fees $ 3.22 for testimony.
" " 10.00 for report.

$13.22
Paid by complainants' solicitors.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 14," the amendment to the final decree entered in said Superior court in said last mentioned cause, September 9, 1873, which is as follows:

1836
44831

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor.
} *Bill.*

Now on this day come the said complainants, Frank C. Taylor and Maria L. Taylor, by their solicitors, and N. A. Lauer, guardian *ad litem* of the infant defendants in said cause, also comes the default of the said defendant, Ira Scott, and Francis B. Peabody, having been heretofore entered, and it appearing to the court that in the papers and records in said cause, the number of the book of record wherein the trust deed from said complainants to said Ira Scott, referred to in said bill of complaint, was recorded, sometimes appears as 663; and that the same was recorded in book 673. On motion of the said complainants it is ordered that whereever in said papers and records, the said book appears 663, the same may be amended by drawing a line in red ink through the said figures and writing above them the figures 673.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 15," the bill of review, filed April 26, 1878, in the Superior court of Cook county, in said last mentioned cause, except the exhibits, which have already been introduced in evidence by complainant herein, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

August Term, A. D. 1877.

IN CHANCERY.

Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor,

*vs.*

Frank C. Taylor, Maria L. Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward W. Russell, and the Franklin Savings Bank.

TO THE HONORABLE THE JUDGES OF THE SUPERIOR COURT, IN CHANCERY SITTING:

Your orators, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, all infant minors, by Orville Peckham, their next friend, bring this, their bill of complaint, against Frank C. Taylor, Maria L. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward W. Russell and the Franklin Savings Bank, and humbly complaining, show unto your Honors that on the 23rd day of July, A. D. 1873, Frank C. Taylor and Maria L. Taylor (hereinafter named defendants), filed in the office of the clerk of this Honorable court their certain bill of complaint entitled to the August Term thereof against your orators and against Ira Scott, Francis B. Peabody, a copy of which bill of complaint is annexed hereto and marked "Exhibit No. 1," and your orators pray that it may be here inserted and considered a part of this bill.

And your orators further show that on the 6th day of August, A. D. 1873, being one of the days of the August Term of this court, it was ordered by this court that the said bill of complaint and the matters and things therein stated and charged, be taken *pro confesso* by and against said defendants, Ira Scott and Francis B. Peabody, for want of their appearance and answer thereto, and that Nicholas H. Lauer be appointed guardian *ad litem* for the defendants Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, who appeared to the court to be minors under age.

And your orators further show that the said Nicholas H. Lauer, on the same day, filed therein, the answer for said infant defendants, your orators neither admitting nor denying any of the matters or things stated and charged in the bill of complaint filed in the cause, but requiring strict proof thereof.

And your orators further show that the cause was then on the same day referred to Benjamin B. Magruder, Esq., one of the masters in chancery of this court, to take the proofs therein, and report the same to this court, with his opinion on the law and evidence.

And your orators further show that on, to-wit: The 19th day of August, in the said year, being one of the days of the August Term of this court, that a report of said master having been filed in said cause, a decree was passed and entered by this court in said cause, a copy of which decree is annexed to this bill, marked "Exhibit No. 2," which said exhibit your orators pray may be inserted here as a part of this bill.

And your orators show that said decree has been duly entered and enrolled in the records of this court, but this decree your orators humbly insist is erroneous and ought to be reviewed, reversed and set aside.

For your orators show unto this Honorable court, by leave of this Honorable court first had and obtained, that since the bringing reference and trial of said cause, and since the entry of said decree hereinbefore set forth and immediately before the filing of this bill your orators have discovered that this original deed of trust, referred to in the bill of complaint of said cause as made by Maria L. Taylor and Frank C. Taylor, to Ira Scott, as trustee, on the 13th day of June, A. D., 1871, was not destroyed by fire on October 8 and 9, A. D., 1871, or at any other time, and have discovered said original deed of trust, which said original deed of trust is now in the possession of the next friend of your orators, Orville Peckham, by whom they bring this, their bill of complaint and review.

And your orators further show unto your Honors that a copy of said deed of trust is hereto annexed and marked "Exhibit No. 3," and pray that it may be made a part of this bill.

And your orators further show unto your Honors that said deed of trust is entirely and wholly different from the pretended conveyance, or copy of a conveyance, marked "Exhibit A," annexed to the bill of complaint filed in said cause, and therefore entirely and wholly different from the conveyance found; said decree above set forth to have been said original trust conveyance, and found by said decree to have been established by a former decree of this court to be such conveyance.

And your orators say that all the subsequent findings and orders of said decree were based and founded on the erroneous finding that such pretended copy of a conveyance annexed to the bill of complaint in said cause, and marked "Exhibit A," was a copy of said original trust conveyance above referred to.

And your orators further show that although said actual deed of trust vested in your orators, who are the children of said Frank C. Taylor and Maria L. Taylor, certain very valuable rights and property in the property in the premises therein described, said pretended conveyance so erroneously found by said decree to be the same, as said original trust conveyance does not so do.

And that whereas by said original deed of trust it was expressly provided in said conveyance, that no charge, lien or incumbrance on said premises, or any portion thereof should ever be created for the purpose of improving or building on said premises or otherwise, by the trustee in said conveyance, or his successors in trust, it is, on the other hand, provided in said pretended conveyance, so erroneously found by said decree to have been the said conveyance or a copy thereof, that said trustee or successor in trust should have authority and power to borrow money for the purpose of building on said estate, and to secure the payment thereof by executing on said premises, or any portion thereof, mortgages or trust deeds.

And your orators further show that said original deed of trust did not provide for the appointment by the court, upon the application of a *cestui que* trust under said deed in certain contingencies, of a successor in trust to said Ira Scott and Francis B. Peabody, as is by said bill of complaint alleged.

And your orators say that during all the time said cause was pending, and when said decree was entered, they were and have ever since been infant minors, and that their guardian *ad litem* did not protect their rights in said cause, and that they have never in any manner waived or released their rights in said matters, and that they have only just discovered their rights in the same and the original deed of trust referred to, and that it was impossible

while said cause was pending, or ever before this time, for them or their guardian *ad litem* to get possession of said deed of trust, and that they and their guardian *ad litem* were entirely in ignorance and without the means of knowledge of the existence of said deed of trust, or that it was not destroyed by fire on October 8 and 9, A. D. 1871, as alleged by the complainants in said cause, the said deed of trust having been ever since said bill of complaint in said cause was filed, up to a time but just before the filing of this bill by your orators, in the possession of the complainants in said cause, Frank C. Taylor and Maria L. Taylor, although, as they now say, without their knowledge and contrary to their belief.

And your orators show also that the entry of said decree as above set forth, they have only lately discovered, and that they never had proper or sufficient notice or service in said cause, and they say that the cause, proceedings and decree operated as a fraud upon the rights of your orators, and were wholly fraudulent and void as against them, your said orators.

Wherefore, and by reason of the newly discovered matter as above set forth, your orators are advised and insist that under the circumstances aforesaid the said decree in said cause above set forth ought to be reviewed and reversed.

And your orators further show that Charles H. Mulliken, Francis S. Howe and Edward W. Russell and the Franklin Savings Bank, of Pawtucket, Rhode Island, claim some rights in said property described in said decree resting on said decree, but which said claims your orators are advised and insist are entirely unfounded.

And your orators further show that Robert C. Taylor is an infant child of said Frank C. Taylor and Maria L. Taylor, born since the institution of said suit, and has rights in said property of the same nature as those of your petitioners.

In consideration whereof, forasmuch as your orators are entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and reliable.

To the end, therefore, that the said Frank C. Taylor, Maria L. Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward W. Russell and the Franklin Savings Bank may (but not upon their oaths, their oaths to their answer being waived) full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they thereunto particularly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective

information, hearsay and belief, and more especially, that said Frank C. Taylor and Maria L. Taylor may answer and set forth whether they had said original deed of trust referred to in their possession at the time of the pendency of said proceedings and the entry of said decree, and whether said deed is now in existence, or was, as by them alleged, destroyed by fire.

And that the said decree in said cause may be reviewed and reversed and your orators placed in the same position as though such decree had never been made or entered, and that your orator may have such further and other relief in the premises as the nature of their case shall require and to your Honors shall seem meet.

May it please your Honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this Honorable court, to be directed to the said Frank C. Taylor, Maria L. Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward W. Russell and the Franklin Savings Bank, of Pawtucket, commanding them and each of them by a certain day and under a certain penalty therein to be inserted, to be and appear before said court and then and there to answer the premises and further to stand to and abide by such order and decree herein as shall be agreeable to equity and good conscience.

And your orator will ever pray.

FRANK C. TAYLOR, JR.,
MARIA LOUISE TAYLOR,
JOSEPHINE S. TAYLOR,
ALEXANDER TAYLOR,

By their next friend,

ORVILLE PECKHAM.

EDW. O. BROWN,

*Of Counsel.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 16," the answer filed by said Franklin Savings Bank to said last mentioned bill of review, filed December 14, 1878, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE SUPERIOR COURT OF COOK COUNTY.

Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor,
*vs.*
Frank C. Taylor, Maria L. Taylor, Robert C. Taylor, Ira Scott, Francis B. Peabody, Charles H. Mulliken, Francis S. Howe, Edward W. Russell and The Franklin Savings Bank. } *In Chancery.*

*The answer of the Franklin Savings Bank and of the above defendants to the bill of review of the above named complainants:*

This defendant, now and at all times saving to itself all benefit of exception that can or may be had to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

That it admits that on the 23d day of July, 1873, said Frank C. Taylor and Maria L. Taylor filed in this Honorable court their certain bill of complaint entitled to the August Term thereof, against the complainants in said bill of review, together with Ira Scott and Francis B. Peabody as defendants, but whether "Exhibit No. 1," attached to said bill of review, is a copy of said bill of complaint, this defendant neither admits or denies, but leaves the complainants to make such proof thereof as they may be advised is necessary.

And this defendant, further answering, admits that upon the 6th day of August, 1873, or about that time, said bill of complaint was taken *pro confesso* against said Ira Scott and Francis Peabody;

and that Nicholas H. Lauer was appointed guardian *ad litem* for the infant defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, and that said Lauer as such guardian *ad litem* did thereupon on the day last mentioned file in said cause an answer for said infant defendants above named in the usual form, neither admitting or denying any of the matters or things stated and charged in said bill of complaint, but requiring strict proof thereof.

This defendant, further answering, admits that said cause was upon the day last mentioned referred to Benjamin D. Magruder, Esq., one of the masters in chancery of this court, and that on or about August 19, 1873, the report of said master was filed in said cause, and a decree rendered therein by this Honorable court. But whether "Exhibit number 2," attached to said bill of review, is a copy of said decree, this defendant neither admits nor denies, but leaves the complainants to make such proofs thereof as they shall be advised is necessary.

And this defendant, further answering, admits that the decree rendered by this court in said cause has been duly entered and enrolled in the records of this court, but the defendant denies that said decree is in any respect erroneous, and denies that there is any reason for reviewing, reversing or setting aside the same.

And the defendant further answering, saith that it is ignorant whether or not the complainants in said bill of review have discovered that the said original deed of trust from Maria L. Taylor and Frank C. Taylor to Ira Scott has not been destroyed, and whether or not they have discovered said original deed of trust, and whether or not the same is now in the possession of Orville Peckham, as the complainants in their said bill of review allege, and if said original deed of trust has been discovered by said complainants this defendant is ignorant as to the time when the same was actually discovered by said complainants, and it calls upon said complainants to make strict proof of each and all their allegations in that behalf; but this defendant avers that if said deed of trust is now in the possession of said Peckham as said complainants in said bill of review allege, the same might, by ordinary diligence upon the part of said complainants, have been found and produced prior to the entering of the decree upon said original bill of complaint herein and prior to the filing of said bill, and it was the duty of said complainants so to produce the same.

And this defendant, further answering, saith that whether "Exhibit number 3," attached to said bill of reveiw is a copy of said original deed of trust, this defendant neither admits nor denies, but leaves the complainants to make such proof of their allegations in that behalf as they shall be advised is necessary.

And this defendant, further answering, saith that whether said original deed in trust differs from "Exhibit A," attached to said original bill of complaint, this defendant neither admits nor denies, but calls upon the complainants to make strict proof of each and all of the allegations in that behalf contained in said bill of review which said complainants consider material or necessary to be proved; but this defendant saith that if said original deed in trust has recently been discovered by said complainants, and if the same does differ from "Exhibit A," aforesaid, as said complainants have in their said bill of review alleged, nevertheless the interest of this defendant in the premises described in and conveyed by said deed of trust should not be prejudiced thereby, but should remain as fixed after the decree rendered by this Honorable court upon said original bill of complaint, and as hereinafter set forth.

And this defendant, further answering, saith that it believes it to be true that the complainants in said bill of review were, at the time of the filing of the original bill herein, and during the pendency thereof, and still are infants, but it denies that their guardian *ad litem* failed to protect their rights in said cause, and expressly denies the allegation in said bill of review contained that the complainants in said bill of review have never in any manner waived or released their rights in said matters, and denies that it was impossible while said cause was pending for them or their guardian *ad litem* to get possession of said original deed of trust, if the same is now in existence and in their possession, as they allege, and denies that they were without the means of knowledge of the existence of said deed of trust as in their said bill of review they have alleged.

And this defendant, further answering, denies that the complainants in said bill of review had at the time of the filing of the said bill of review then only lately discovered the entry of the decree upon the original bill herein, and denies the allegations contained in said bill of review, that the complainants therein never had proper or sufficient notice or service in said cause, and denies that the proceedings in said cause or the decree rendered therein operated as a fraud on the rights of the complainants in said bill of review, and denies that they were fraudulent or void as against them, as the complainants in their said bill of review have alleged.

And this defendant, further answering, saith that at the time of the great fire in Chicago, which occurred upon the eighth and ninth days of October, 1871, the said Frank C. Taylor and the said Maria L. Taylor occupied as a homestead the premises described in the original bill of complaint herein, situate upon the corner of Dearborn and Maple streets in said Chicago, and being

that part of block 16 in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the west line of Dearborn street 300 feet north of the southwest corner of said block; thence running on the east line of Dearborn street 103 feet, more or less, to the northwest corner of said block; thence east on the south line of Maple street 150 feet to an alley; thence south parallel with Dearborn street 103 feet, more or less; thence west parallel with Maple street 150 feet to the place of beginning; otherwise described as lot four of block sixteen, in Bushnell's addition to Chicago; the improvements on said premises consisting of a dwelling house and certain outbuildings appurtenant thereto, and the complainants in said bill of review, with the exception of Alexander Taylor, who has since been born, were then living with their said parents, Frank C. and Maria L. Taylor, upon said premises.

And this defendant, further answering, saith that the improvements upon said premises were destroyed by said fire, and that upon the 26th day of June, 1872, said Frank C. Taylor applied to this defendant for a loan of $30,000, for the purpose of building new improvements, and thereupon this defendant did loan said Taylor said sum of $30,000, and the said Taylor made his promissory note for that amount, dated June 26, 1872, payable to the order of George W. Newell, treasurer (he then being treasurer of this defendant), at the office of this defendant in Pawtucket, Rhode Island, and to secure the payment of said note Frank C. Taylor and wife executed a trust deed to Edward Brown conveying the above described premises, which trust deed was duly acknowledged and recorded in the recorder's office in and for Cook county upon July 9, 1872, in book 111, on page 272.

And this defendant, further answering, saith that at the time of the making of such application and said loan, this defendant was engaged in the banking business at Pawtucket aforesaid, and said Frank C. Taylor was engaged in the banking business in the said city of Chicago, he then being vice-president of the Fourth National Bank in said city of Chicago. That this defendant had made a few loans in said city of Chicago, and said Taylor had, as agent of the defendant, placed all the same and attended to the securities theretofore. That this defendant had no knowledge of the manner of doing such business in Chicago, but had entire confidence in the ability and integrity of said Taylor, and left to him all matters connected with the security for loans made through him as such agent. That it was the usual course of business between this defendant and said Taylor in making said loans for said Taylor to draw on this defendant for the amount of the loan after the application for such loan had been accepted, and after such draft

had been made by this defendant then to send to this defendant the notes for such loan and the trust deed or mortgage securing the same. That said Taylor sometimes sent to this defendant with such notes and trust deed or mortgage, an opinion of title made by some lawyer in Chicago, employed by said Tavlor, but this defendant did not employ any lawyer to examine the title on such loans, and did not know it was usual in making such loans in Chicago to have such opinion. That said Taylor never sent to this defendant an abstract of title in connection with any such loan, and this defendant did not know that any such thing was usual, the same not being in use in the city of Pawtucket, Rhode Island, and this defendant having had no experience in the same. That this defendant implicitly trusted to said Taylor to furnish to the defendant securities for its loans, which should be prepared and vouched for in accordance with the usual modes of doing such business in Chicago, and that said Taylor would see to it that this defendant's loans were made upon property of sufficient value, and that the trust deeds or mortgages given to secure the same conveyed as security for such loans the *fee simple* absolute of the premises on which said loans were made. And this defendant believed, as it still does believe, that said Taylor was sufficiently familiar with the manner of doing such business in Chicago to properly protect the interests of this defendant in such loans and to see that it had proper securities as aforesaid, and this defendant, relying entirely on the integrity and ability of said Taylor, was accustomed to receive from him such securities as he forwarded for loans made for this defendant without questioning their regularity nor sufficiency.

And this defendant, further answering, saith, that after the application of said Taylor for said loan of $30,000 was accepted by this defendant, said Taylor forwarded to it his note for said sum, and subsequently a trust deed securing the same, and received said sum of money at different times as he called for the same, receiving part thereof before said trust deed was forwarded to this defendant. Said Taylor did not forward to this defendant any abstract of title, nor any opinion of title of said real estate, but the whole of the business of said loan was conducted by this defendant and said Taylor, in the manner usual between them in such matters, and this defendant relying entirely upon the integrity and ability of said Taylor, as it had done in such matters, received from him said trust deed and note, believing that said trust deed for the purpose of securing said loan conveyed in fee simple absolute the premises described therein, and that everything which had been done by said Taylor would properly protect the interests of this defendant, and there was nothing in said transaction to excite the suspicion of this defendant or to shake its confidence in said Taylor.

This defendant, further answering, saith that the said Frank C. Taylor, after the making of said loan of this defendant, as aforesaid, proceeded to improve the above described premises by erecting thereon five stone front dwelling houses, each three-stories and basement in height, and in making such improvements used the money loaned of this defendant, as aforesaid, and said improvements were made and completed at an expense, as this defendant is informed and believes, of more than $53,000.

And this defendant, further answering, saith that after the making of the aforesaid loan, and after said improvements had been commenced and prosecuted to a considerable extent, and upon the 30th day of January, 1873, said Frank C. Taylor and Maria L. Taylor, his wife, filed in this Honorable court a certain bill of complaint or petition, under what is commonly known as the "Burnt Records Act," of the state of Illinois, making defendants thereto to said Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown and this defendant, in which petition said Frank C. Taylor and Maria L. Taylor, his wife, amongst other things set up that upon the 13th day of June, 1871, said Maria L. Taylor was seized and possessed in fee simple absolute of the premises hereinbefore described, and that upon said 13th day of June, 1871, she and the said Frank C. Taylor, her husband, did jointly make, execute and deliver to said Ira Scott, a conveyance of said premises upon certain trusts in said conveyance expressed and set forth, and said petitioners attached to their said petition, as an exhibit, an instrument which they aver to be a substantial copy of said deed of trust, and which instrument is identical in its terms with "Exhibit A," attached to the original bill of complaint herein.

And the defendant, further answering, saith that said petitioners in said petition further aver that said Frank C. Taylor, Jr., Maria Louise Taylor and Josephine S. Taylor are the sole remaining children of the said Frank C. Taylor and Maria L. Taylor, and that the said children and the said Frank C. Taylor and Maria L. Taylor, together with the said Edward Brown and this defendant, are alone interested in said premises, and that the interest of said Frank C. Taylor and Maria L. Taylor and their children above named therein is subject to the trust deed to said Brown given to secure the loan of $30,000 made by this defendant as aforesaid, which trust deed is fully described in said petition.

And these defendants, further answering, saith that said petitioners further aver in said petition that said original deed of trust and also all the contents of the recorder's office in Cook county, Illinois, including that portion of the public records of said Cook county, which showed the title of said premises, were totally de-

stroyed in the great fire in Chicago, which occurred October 8 and 9, 1871. And said petitioners prayed this Honorable court to establish and confirm the terms of said deed of trust as set forth by them in their exhibit annexed to said petition.

And this defendant, further answering, saith that such proceedings were had in this Honorable court upon said petition, that upon the 29th day of March, 1873, a decree was rendered therein by this Honorable court by which, amongst other things, said court found that upon April 19, 1871, the said Maria L. Taylor was seized and possessed of said premises as of an absolute estate in fee simple; that being so seized and possessed of said premises, the said Maria L. Taylor and the said Frank C. Taylor, her husband, did, on the 13th day of June, 1871, execute and deliver to said Ira Scott a certain deed of trust duly acknowledged and recorded, as was in said petition alleged, and that the exhibit attached to said petition was a true and substantial copy of said original deed of trust; and did further adjudge and declare by said decree, that said petitioners Frank C. Taylor and Maria L. Taylor, his wife, and the said Frank C. Taylor, Jr., and Maria Louise Taylor and Josephine S. Taylor were at the time of the rendering of said decree alone interested in said trust and in said premises; and that their respective interests therein were defined by said exhibit attached to said petition, and that all of said parties in interest above named held their said interests under and in accordance with the terms and provisions of said deed of trust to Ira Scott, as set forth in said exhibit attached to said petition, and restored and established by said decree; and said court did further adjudge by said decree that the interests and rights of this defendant, and the said Edward Brown, trustee for this defendant, should not be, and were not in any wise affected or prejudiced by said decree.

And this defendant, further answering, saith that this Honorable court in ordering and decreeing that the exhibit attached to said petition was a true copy in substance of said original deed in trust to Ira Scott, did set forth in full, said exhibit in said decree, and did thereby establish the same as defining the rights of said Frank C. Taylor, Maria L. Taylor, his wife, and his infant children above named.

And the defendant, further answering, saith that although this defendant was made a party to said petition, the service upon this defendant in said cause was by publication, alone, and this defendant had no notice or knowledge of the filing of said petition or of the proceedings thereon, and no notice or knowledge that said premises had ever been conveyed in trust to Ira Scott, as aforesaid, until sometime in the summer of 1876, and long after the rendering of the decree thereon, and after this defendant had filed its bill

of complaint in the Circuit court, of the United States, for the Northern district of Illinois, as hereinafter stated. But this defendant always supposed until sometime in the summer of 1876, as aforesaid, that the trust deed to Edward Brown, executed by the said Frank C. Taylor and Maria L. Taylor, his wife for the use of this defendant conveyed to said Brown for the uses and purposes in said trust deed declared the tittle in fee simple absolute to the premises in said trust deed described.

And this defendant, further answering, saith that after the rendering of the decree upon the aforesaid petition by this Honorable court, and upon the 13th day of June, 1873, this defendant still being in the banking business at Pawtucket, aforesaid, said Frank C. Taylor still being the agent for this defendant at Chicago, as aforesaid, and still having the entire confidence of this defendant, applied to this defendant for a loan of $36,000 for five years, such loan to be substituted for the preceding loan of $30,000 which was then about to become due, and upon which same interest had then accrued, and requested this defendant to accept as security for said loan four of said five stone front houses, with the land appurtenant to said four houses, and represented to this defendant that said four houses and land were worth not less than $68,000, and that the same were occupied as residences at a rental of $6,500 per annum, and said Taylor requested this defendant to divide said loan into four parts of $9,000 each, and this defendant, in accordance with the request of said Taylor, did substitute for said loan of $30,000 a loan for five years of $36,000, and did pay to said Taylor the difference between said sum of $36,000 and said sum of $30,000 with accrued interest as aforesaid, and the said Taylor forwarded to this defendant as evidence of such new loan, four notes, each for the sum of $9,000, dated August 23, 1873, and payable five years after that date to the order of this defendant, with interest at the rate of nine and a half per cent. per annum, payable semi-annually, and did also forward with each of said notes ten interest notes bearing the same date, payable to the same order, evidencing the interest upon said principal notes at the rate aforesaid until the maturity thereof. All which notes, both for principal and interest, were signed by Frank C. Taylor and said Maria L. Taylor, and by Charles H. Mulliken, trustee. And said Taylor also forwarded to this defendant four deeds of trust, one to secure each of the said principal notes with coupons or interest notes belonging thereto, all bearing date August 23, 1873, and all executed by said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, one conveying lot 1 in the subdivision of lot 4, block 16, of Bushnell's addition to Chicago, recorded in the recorder's office of said Cook county in book of records 303, upon page 227; another conveying lot

2, in the subdivision aforesaid, and duly recorded in said recorder's office in book 306 of records, upon page 207; another conveying lot 4 in the subdivision aforesaid, and duly recorded in said recorder's office in book 242 of records, upon page 614; and another conveying lot 5 in the aforesaid subdivision, and recorded in the recorder's office aforesaid, in book 242 of records on page 609, all which lots are part of the premises first hereinbefore described, said premises having been subdivided by the said Frank C. Taylor or said Ira Scott, into five lots, four of which, with the four stone front residences, were conveyed by the aforesaid four trust deeds as security for this defendant's said loan of $36,000, and each and all of said four trust deeds were made to Francis S. Howe as trustee. In each and all thereof Edward W. Russell was named as successor in trust.

And this defendant, further answering, saith that upon the 1st day of January, 1874, said Frank C. Taylor gave to this defendant a certain other promissory note for the sum of $2,875, made by the said Frank C. Taylor, dated January 1, 1874, payable to the order of this defendant two years after this date, with interest at the rate of ten per cent. per annum, payable semi-annually, and to evidence said interest, he also gave to this defendant four coupon notes bearing the same date and payable to the same order and executed by said Frank C. Taylor, and did also give to this defendant to secure said principal and interest notes, a certain deed of trust also bearing date January 1, 1874, executed by said Frank C. Taylor and Maria L. Taylor, his wife, and by Charles A. Mulliken, trustee, which trust deed conveyed to Francis S. Howe, lots 1, 2, 4 and 5 aforesaid, and was duly acknowledged and recorded in said recorder's office, in book 338 of records, upon page 159; in which said last mentioned deed of trust said Edward W. Russell was also named as a successor in trust.

And this defendant, further answering, saith that it was expressly provided in each of said trust deeds, that in case of default in any of the payments of principal or interest which such deed was given to secure the whole of the principal sum secured, and the interest thereon should, at the option of the legal holder of the notes by which such indebtedness was evidenced become at once due and payable, and the premises conveyed by such deed of trust might be sold in the same manner and with the same effect as though said indebtedness had matured; and upon the 28th day of June, 1876, this defendant then being, as it now is, the owner and holder of said trust deeds, and of the principal and interest notes secured thereby, and default having then been made in the payment of coupons numbered 3, 4 and 5, attached to each of said principal notes for $9,000, which coupons became due as follows:

Four on February 23, 1875; four on August 23, 1875; and four on February 23, 1876, this defendant did declare the principal of each and all of said notes of $9,000 due and payable, and default having been made in the payment of the two last maturing coupons attached to said principal note for $2,875, and said principal note having itself by its terms become due and payable, this defendant did, upon said 28th of June, 1876, file in the Circuit court of the United States for the Northern district of Illinois its certain bill of complaint against said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Francis S. Howe, trustee, Edward W. Russell, successor in trust, and certain other defendants, for the foreclosure of said trust deeds and the sale of the premises conveyed thereby for the satisfaction of the indebtedness to to the defendant thereby secured.

And this defendant, further answering, saith that the complainants in said bill of review have been served with process in said cause instituted by this defendant in said Circuit court of the United States, and before the filing of their said bill of review, a guardian *ad litem* had been appointed by the said Circuit court of the United States to appear and answer this defendant's said bill of complaint on behalf of the complainants in said bill of review, and said guardian *ad litem* had filed an answer to the bill of this defendant, and issue had been joined thereon and said cause had been referred to the master in chancery of said circuit court of the United States, and proofs had been taken thereon, both on behalf of this defendant as complainant in said cause, and upon the behalf of defendants in said cause.

And this defendant, further answering, saith that since the filing of said bill of review, this defendant has by leave of the court had and obtained, filed its supplemental bill in said cause in said Circuit court of the United States, setting up fully the interests of this defendant under the aforesaid trust deeds to Francis S. Howe; setting up also the proceedings heretofore had in said cause upon the original bill of complaint filed herein, and the filing of the bill of review herein, and also setting up the alleged discovery by the complainants in said bill of review of the original deed of trust from said Frank C. Taylor, and Maria L. Taylor, his wife, to said Ira Scott, and praying amongst other things, that an account may be taken under the direction of said court of what is due and owing to this defendant for principal and interest upon said notes and coupons, and on account of taxes paid by this defendant, and that in default of payment of the same by the defendants to said bill, or some of them, that said premises may be sold to satisfy the amount found due to this defendant. Or if the the court shall find that the

interest of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, and Robert. C. Taylor is not conveyed by said trust deed to Francis S. Howe, then that in default of such payment of the amount found due to this defendant, that the interest of Frank C. Taylor and Maria L. Taylor, his wife, under said trust deed to Ira Scott be sold under the direction of said court, and the proceeds of such sale applied to the payment of the amount found due to this defendant, and if such sale shall fail to satisfy the amount found due to this defendant, then that said court order said Charles H. Mulliken, as trustee, to sell so much of the interest of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor and Robert C. Taylor in said premises, as shall be necessary to satisfy the balance then remaining unsatisfied of the amount found due to this defendant by said court.

And this defendant, further answering, saith that the proceedings instituted by this defendant in the Circuit court of the United States aforesaid, are still pending upon said original and supplemental bill filed by this defendant; that said court has complete jurisdiction of the matters and things contained in said original and supplemental bills, and prior to the filing of the aforesaid bill of review, said Circuit court of the United States had acquired jurisdiction of the persons of said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, and summons is now issued from said court in said proceedings against said Robert C. Taylor, commanding him, amongst other things, to appear and answer to said original and supplemental bill, said Robert C. having been born since the filing of said original bill by this defendant, and having been made a party to said proceedings by said supplemental bill.

This defendant, further answering, saith that since the filing of the original bill of complaint herein the defendant, Robert C. Taylor has been born, and is the child of said Frank C. Taylor and Maria L. Taylor, his wife, and the interest of Robert C. Taylor in the premises hereinbefore described, and in said bill of review, is the same as the interest of the complainants in said bill of review.

And the defendant, further answering, saith that at the time of the making of said original deed of trust to Ira Scott as aforesaid, the said Frank C. Taylor and Maria L. Taylor, his wife, and the children of said Frank C. Taylor and Maria L. Taylor, constituted and have always constituted, and do now constitute one family, and no guardian has ever been appointed for the persons or for the estate of either of said children, but said children always have been, and are now, in the custody and control and under the guidance and direction solely of their parents, the said Frank C. Taylor and Maria L. Taylor.

And this defendant, further answering, saith that it appears from the proceedings heretofore had in this cause that at the time of the said great fire in Chicago, in October, 1871, the said Frank C. Taylor and Maria L. Taylor, his wife, and all of the complainants in the bill of review herein, except Alexander Taylor, were occupying said premises as a homestead. That the losses of said Frank C. Taylor and Maria L. Taylor by said fire were such that they were unable thereafter suitably to provide for their children without such income as would be derived from said premises if the same were improved; and that the said Frank C. Taylor and Maria L. Taylor, acting on behalf of themselves and their said infant children, did improve said premises by erecting thereon the block of five stone front residences as aforesaid and did expend in making such improvements, the $36,000 borrowed from this defendant as aforesaid.

And this defendant, further answering, saith that this improvement was, at the time the same was made, a wise and judicious improvement, and was well calculated to yield an income which would enable said Frank C. Taylor and Maria L. Taylor to support said children, and this defendant avers that said improvements, after the same were made, did yield such income.

And this defendant, further answering, saith that since the rendering of the decree upon the original bill herein by this Honorable court, this defendant has acquired its rights and interest in said premises under the five trust deeds held by it as aforesaid, and said rights and interest were acquired by it under and in accordance with the terms of said decree, and the money loaned by it and secured by said trust deeds was actually expended for the benefit of the complainants in said bill of review and said Robert C. Taylor, Frank C. Taylor and Maria L. Taylor, his wife, and no action should be taken by this Honorable court in reviewing, reversing or setting aside said decree which will prejudice or in any way affect the interests of this defendant under said trust deeds.

And this defendant, further answering, saith that since it acquired the five trust deeds hereinbefore mentioned, in order to preserve and protect its security under the same, it has paid a large sum of money for taxes upon the premises conveyed by said trust deeds, and that such payments were necessary to prevent said premises from being sold for the non-payment of such taxes, neither said Frank C. Taylor nor said Mulliken, as trustee, nor any person interested in said premises other than this defendant, having paid any of said taxes or taken any steps to prevent said premises from being sold for the non-payment of the same. That on or about August 26, 1876, this defendant paid for this purpose the sum of $1,015.24, and on or about September 11, 1876, the further

sum of $85.73, and since the filing by this defendant of its bill of complaint in the Circuit court of the United States, as aforesaid, the taxes upon said premises have been paid by the receiver appointed by said court in said cause, and said receiver has also paid out various sums of money, the amounts of which are not now known to this defendant, for repairing and preserving the improvements upon said premises, and for insurance and taxes and assessments thereon, neither of the complainants in said bill of review nor any person acting in their behalf, having, to the knowledge of this defendant, paid out any sum for preserving or protecting said premises, or for taxes or assessments thereon.

And this defendant, further answering, saith that after it had filed its bill in the Circuit court of the United States, as aforesaid, the said Frank C. Taylor and Maria L. Taylor, his wife, being unable by any other means to defeat the claims of this defendant in said bill, produced said alleged original deed in trust to Ira Scott, and combining and confederating with the complainants in said bill of review, and with the said Robert C. Taylor, caused the said complainants in said bill of review to file said bill of review, and also at the same time to file a bill of review in that certain other proceedings for establishing and confirming the title instituted in this Honorable court, and hereinbefore mentioned, with the intent, if possible, to deprive this defendant of all security for its said loan of $36,000 expended for the benefit of said confederates, as hereinbefore stated, and also of the amount paid out and expended by this defendant for taxes, and otherwise to protect and preserve its rights under said trust deeds, as aforesaid.

And this defendant, further answering, saith that if said original deed in trust to Ira Scott is now in the possession of the complainants in said bill of review, or of their next friend, said Peckham, the same was, at the time of procuring the said loan of $30,000 from this defendant as aforesaid, and ever since, has been in the possession of said Frank C. and Maria L. Taylor, for themselves and for their infant children, and by withholding the same from the knowledge of this defendant the said Frank C. Taylor and Maria L. Taylor, acting for themselves and for said infant children, have procured from this defendant said sum of $36,000, which has been expended by them for their benefit as aforesaid.

And this defendant, further answering, saith that if at the time of the rendering of the decree upon the original bill herein, said alleged original deed in trust to Ira Scott had been produced before this Honorable court, that so much of said premises as was necessary would have been sold for the payment of the improvements which had been placed thereon, and that, at that time, said premises were of such value that the cost of said improvements could

be made by Walter Butler, Esq., master in chancery, or his successor in office, and that said Walter Butler is no longer a master in chancery, and that Thomas G. Windes is the successor in office of said Walter Butler; and it further appearing that said sale was duly advertised and was made under and in accordance in all respects with said decree, and with the requirements of the laws of said state of Illinois, and that a certificate of sale has been duly and properly issued to Hiram H. Thomas, who was the purchaser at said sale, and that the proceeds of such sale have been distributed in accordance with said decree and the requirements of the law.

Now, therefore, upon the motion of W. H. Swift, Esq., solicitor for said Franklin Savings Bank, it is hereby ordered that said sale be, and the same is hereby confirmed.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 18," the original bill in case No. 13,751, in this court in chancery, filed June 28, 1876, which is as follows:

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. } ss.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS:

The Franklin Savings Bank, of Pawtucket, Rhode Island, a corporation organized and existing under and by virtue of the laws of the state of Rhode Island, and having its principal place of business at Pawtucket in said state, brings this, its bill of complaint, against Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Francis S. Howe, trustee, Edward W. Russell, successor in trust, George S. Carmichael, Harriet K. Carmichael, James C. Grant, John Price, Michael Bryne, Thomas O'Brien, Robert H. Foss, John L. Beveridge, Gustav Fisher, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased, Charles Hoffman, M. C. Baldwin and R. Biddle Roberts and Emil W. Weishaar, administrators of the estate of John Weishaar, deceased, the Gowen Marble Company and Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor, who are citizens of the state of Illinois, and

residents of said district, and also against the State Bank of Nebraska, a banking corporation having its principal place of business in the state of Nebraska.

And thereupon your orator complains and says that the said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, on or about the 23d day of August, A.D. 1873, applied to and requested your orator to lend them the sum of $36,000 on the security hereinafter named, and that your orator complied with such request, and did accordingly lend and advance said sum of $36,000 to said Frank C. and Maria L. Taylor, and Charles H. Mulliken, trustee, at Chicago, in conformity to, and under, and to be construed by the laws of the state of Illinois.

And that thereupon, and in order to secure the repayment thereof to your orator, with interest at the rate of nine and one-half per cent. per annum, payable half yearly, the said Frank C. and Maria L. Taylor, and Charles H. Mulliken trustee, duly executed and delivered to your orator, their fourth certain promissory notes, all bearing date at Chicago, the said 23rd day of August, A. D. 1873, each of the said notes being for the sum of $9,000, and payable five years after date at the Fourth National Bank, Chicago, Illinois; and your orator further shows that to each of said principal notes were attached ten coupons of the said Frank C. and Maria L. Taylor, and Charles H. Mulliken trustee, all bearing the same date and payable to the same order, and at the same place as said principal note, each of said coupons being for $427.50, for six months' interest on the note to which it was attached, said coupons being numbered from one to ten, both inclusive, and payable in order of their numbers at intervals of six months, without grace, from the date of such principal note until the maturity of the same; and your orator further shows that each of said principal notes provided that it, and the coupons annexed to it, should bear interest after maturity at the rate of ten per centum per annum.

And your orator further shows that for the purpose of further securing to your orator the repayment of said sum of money, so loaned as aforesaid, with the interest thereon as aforesaid, the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, also at the same time executed and delivered to the said Francis S. Howe, as trustee, their four certain trust deeds under their hands and seals, all bearing date the said 23rd day of August, A. D. 1873, and made or expressed to be made between the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, as party of the first part, and the said Francis S. Howe, as party of the second part, and by the said trust deeds, the said party of the first part conveyed to the party of the second part, the following lots, pieces or parcels of land, situate in the city of Chicago, in the county of Cook and state of Illinois:

By the first of said trust deeds, lot one (1), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision in the recorder's office of said Cook county, in book 5, of plats, page 24; by the second of

said trust deeds, lot two (2) in said subdivision, by the third of said trust deeds, lot four (4), of said subdivision, and by the fourth of said trust deeds, lot five (5), of said subdivision.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in and to the same and every part and parcel thereof, with the appurtenances to have and to hold the same unto the party of the second part, but upon the conditions and trusts hereinafter set forth.

And your orator further showeth that each of said trust deeds was given for the purpose of securing the payment to your orator of one of the principal notes for $9,000, above mentioned and the coupons attached to such note and the interest thereon as provided in said note.

And your orator further showeth that the said Frank C. Taylor, afterwards, and on or about the first day of January, A. D. 1874, applied to and requested your orator to lend him the further sum of $2,875, on the security hereinafter named, and that your orator complied with such request and did accordingly lend and advance to said Taylor said sum of $2,875, at Chicago, in conformity to and under and to be construed by the laws of the state of Illinois.

That to secure the repayment of said sum to your orator, the said Frank C. Taylor thereupon executed and delivered to your orator his promissory note, dated at Chicago, on said 1st day of January, A. D. 1874, for $2,875, payable to the order of your orator two years after date at the Fourth National Bank of Chicago, and also his four coupons attached to said principal note, all dated the same day, payable to the same order and at the same place as said principal note, and each for $143.75, being for six months' interest on said principal note at ten per cent per annum, which said coupons were numbered from one to four, both inclusive and payable in order of their numbers at intervals of six months, without grace, from the date of said principal note until its maturity; and your orator further shows that said principal note and the coupons annexed to it bear interest after maturity at the rate of ten per cent per annum.

And your orator further shows that for the purpose of further securing to your orator the repayment of said sum of $2,875 so loaned as aforesaid, with interest thereon as aforesaid, the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, also at the same time executed and delivered to said Francis S. Howe, as trustee, their certain other trust deed under their hands and seals, bearing date the said 1st day of January, A. D. 1874, and made or expressed to be made between the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, as party of the first part, and the said Francis S. Howe, as party of the second part, and by said trust deed the party of the first part conveyed to the party of the sec-

ond part the following lots, pieces or parcels of land, situate in the city of Chicago, and in the county of Cook and state of Illinois to-wit:

Lots one (1), two (2), four (4) and five (5), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision in the recorder's office of said Cook county, in book 5 of plats, page 24.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging to or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and rights of dower, claim and demand whatsoever, as well in law as in equity of the party of the first part in and to the same.

And your orator further showeth that each of said trust deeds was given for the purpose of securing the payment of the principal note in such deed mentioned, with interest as aforesaid, and for the use and benefit of your orator, and contained the proper release of dower and of homestead; and your orator further shows that it was expressly stipulated and agreed in each of said trust deeds, that in case of default in any of the payments of principal or interest which such deed was given to secure, the whole of the principal sum thereby secured and the interest should at the option of the legal holder of the notes by which such indebtedness was evidenced, become at once due and payable, and the premises conveyed by such trust deed might be sold in the same manner and with the same effect as if said indebtedness had matured; and in each of said trust deeds it is provided that in case of the death, resignation, removal from said city of Chicago, or inability to act of the said Francis S. Howe, then the said Edward W. Russell should be and was appointed successor in trust, with like power and authority as the said Howe, and the said premises should be vested in said Russell accordingly.

And your orator further showeth that each of said four trust deeds first above mentioned, and which bear date the 23d day of August, A. D. 1873, was duly acknowledged on said last mentioned day by all of the grantors therein, and said deeds were afterwards and on the 25th day of August, A. D. 1873, filed for record in the recorder's office of Cook county, Illinois, and duly recorded therein; the first of said trust deeds in book 303 of records, at page 227, the second in book 306 of records, at page 207, the third in book 242 of records, at page 614, and the fourth in book 242 of records, at page 609, as by the records of said trust deeds now remaining in said office, and also by the certificates of James Stewart, recorder of said county, endorsed upon said trust deeds sufficiently appears; and that the last mentioned of said trust deeds, the one bearing date the 1st day of January, A. D. 1874, was afterwards, to-wit, on the 8th day of January, A. D. 1874, duly acknowledged by the grantors therein, and afterwards, to-wit, on said 8th day of January, A. D. 1874, filed for record in the recorder's office of said Cook county, and duly recorded therein in book 338 of records, at page 159, as

by the record of said trust deed now remaining in said office, and by the certificate of James Stewart, recorder of said county, endorsed upon said trust deed, sufficiently appears.

And your orators further showeth that default has been made in the payment of the coupons numbered 3, 4 and 5, attached to each of said principal notes of $9,000, which coupons became due as follows:

Four on February, 23, A. D. 1875.
Four on August 23, A. D. 1875, and
Four on February 23, A. D. 1876;

and that by reason of such default your orator, who is the legal holder and owner of said principal notes and coupons, did declare and does now declare the whole of said principal notes due and payable.

And your orator further shows that default has been made in the payment of the two last maturing coupons attached to said principal note for $2,875, and that said principal note has itself, by the terms thereof, become due and payable, and that by reason of the premises there is now due to your orator from the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor the following sums:

$1,710 and interest from February 23, 1875, at 10 per cent.
$1,710 and interest from August 23, 1875, at 10 per cent.
$1,710 and interest from February 23, 1876, at 10 per cent.; and
$36,000 and interest from February 23, 1876, at 9½ per cent.; and from the said F. C. Taylor the following sums:
$143.75 and interest from July 1, at 10 per cent.
$143.75 and interest from January 1, 1876, at 10 per cent.
$2,875 and interest from January 1, 1876, at 10 per cent.; all of which sums still remain unpaid.

And your orator further showeth that in a certain action in the Circuit court of Cook county in said state of Illinois, brought to establish mechanics' liens upon the premises conveyed by said trust deeds and other premises, in which action HenryGilsdorff, Frederick Baumann and Edward Baumann and James B. Sullivan were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, your petitioner, Francis S. Howe, Charles H. Mulliken and George Taylor were defendants, it was decreed that said petitioners should recover out of the premises in said petition mentioned as follows: The said Henry Gilsdorff the sum of $6,585.77, and the said Frederick Baumann and Edward Baumann, the sum of $1,120, and the said James B. Sullivan the sum of $1,282.91, and their costs, and the said decree should be a lien upon said premises for said amounts, and your orator avers that said decree is a valid and first lien upon

the premises conveyed by the trust deeds mentioned in this bill of complaint, and that the four trust deeds first above mentioned are valid and second liens upon said lot one (1), lot two (2), lot four (4) and lot five (5), respectively, in the subdivision of lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, subject only to the lien of said decree, and that the last mentioned of said trust deeds, to-wit: the trust deed bearing date January 1, 1874, is a valid and third lien upon said lots one (1), two (2), four (4) and five (5) in the said subdivision, subject only to the lien of said decree and the respective liens of said four trust deeds first above mentioned.

And your orator further showeth that since the making of said five trust deeds to said Howe for the benefit of your orator, the premises so conveyed thereby have greatly depreciated in value, and are now an insufficient security for the amount of money due to your orator, as hereinbefore set forth; that there are dwelling houses on each of said four lots, and other buildings; that said houses and buildings have been rented by the said Frank C. Taylor to certain persons to your orator unknown, and that said Taylor is collecting the rents from said tenants and appropriating the same to his own use, to the manifest injury of your orator; that the said Frank C. Taylor has, since the execution of said notes, been adjudicated bankrupt by the District court of the United States for the Northern district of Illinois and the said Ellis S. Chesbrough, Jr., has been appointed assignee of said bankrupt; that said Maria L. Taylor is insolvent, and that the amount of any deficiency which may remain after the sale of said premises cannot be collected from said Frank C. and Maria L. Taylor, or either of them.

And your orator further shows unto your Honors that the said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, George S. Carmichael, Harriet K. Carmichael, James C. Grant, John Price, Michael Byrne, Thomas O'Brien, Robert H. Foss, John L. Beveridge, Gustav Fischer, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased, Charles Hoffman, M. C. Baldwin, and R. Biddle Roberts, and Emil B. Weishaar, administrators of John Weishaar, deceased, the Gowen Marble Company, Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor, and the State Bank of Nebraska have or claim to have some interest in the premises conveyed as aforesaid by said trust deeds, either as subsequent purchasers, reversioners, incumbrancers, judgment creditors or otherwise, and to be entitled to redeem the same, but that they refuse so to do.

And your orator further showeth that the interest in said premises which said last named parties have, if any they or either of them have, accurred subsequent to the lien of said trust deeds made as aforesaid for the benefit of your orator, and is subject thereto, and that said parties ought either to pay what is due to your orators as aforesaid, or to release their equity of redemption in said premises, but they refuse so to do.

And your orator further showeth that the said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor are minors and children of the said Frank C. and Maria L. Taylor.

To the end, therefore, that the said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Francis S. Howe, trustee, Edward W. Russell, successor in trust, George S. Carmichael, Harriet K. Carmichael, James C. Grant, John Price, Michael Byrne, Thomas O'Brien, Robert H. Foss, John L. Beveridge, Gustav Fischer, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased, Charles Hoffman, M. C. Baldwin, and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar deceased, the Gowen Marble Company, Ellis S. Chesbrough, assignee in bankruptcy of said Frank C. Taylor, and the State Bank of Nebraska may, if they can, show why your orator should not have the relief hereby prayed, and full, true and perfect answers make (but not under oath, answers under oath being hereby waived), to all and singular the premises as fully and particularly as if the same were hereinafter repeated.

Your orator prays that an account may be taken under the direction of this court of what is due and owing to your orator for principal and interest on said notes and coupons, and that said defendants, may be decreed to pay to your orator what may be found due to it on taking such account as aforesaid, together with costs of this suit, by a short day to be appointed by this Honorable court for that purpose, or that in default thereof that said premises may be sold by and under the direction of this court, and the proceeds of such sale be applied to the payment of the amount due your orator as aforesaid, together with all costs and expenses; and that the said Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, trustee, and the other defendants, and all persons claiming under them subsequently to the commencement of this suit may be foreclosed and barred from all equity or redemption or claim of, in and to said premises conveyed by said trust deeds and every part thereof; and that in case the proceeds of such sale shall be insufficient to pay the costs and expenses of this suit and of such sale and the amount so fond due to your orator, that the said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken may be decreed to pay to your orator the amount of such deficiency, and that some proper person may be appointed receiver to collect the rents and profits of said premises, and pay the same over to such person or persons as this court shall direct, and that your orator may have such other and further relief in the premises as to your Honors shall seem meet and the nature of this case may require.

May it please your Honors to grant unto your orator the writ of subpœna of the United States of America, to be directed to the said Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee, Francis S. Howe, trustee, Edward W. Russell,

successor in trust, George S. Carmichael, Harriet H. Carmichael, James C. Grant, John Price, Michael Byrne, Thomas O'Brien, Robert H. Foss, John L. Beveridge, Gustav Fischer, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executor of William Lill, deceased, Charles Hoffman, M. C. Baldwin and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar, the Gowen Marble Company, Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor, and the State Bank of Nebraska, thereby commanding them and every of them at a certain day and under a certain pain therein to be specified, personally to be and appear before your Honors in this Honorable court, and then and there to answer all and singular the premises, and to stand to and abide such order and decree therein, as to your Honors shall seem meet.

And your orator will ever pray, etc.

FRANKLIN SAVINGS BANK,
Of Pawtucket, R. I.,

By W. H. SWIFT,
*Its Attorney.*

GRANT & SWIFT,
*Solicitors and of Counsel.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 19," the second supplemental bill filed in said last mentioned cause, 13,751, April 3, 1879, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES FOR SAID NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, *et al.*
} *In Chancery.*

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS IN CHANCERY SITTING.

The Franklin Savings Bank of Pawtucket, Rhode Island, a corporation organized and existing under and by virtue of the laws of the state of Rhode Island, and a citizen of said state brings this, its second supplemental bill in this Honorable court in the above entitled cause, against Katherine Taylor, who is a citizen of the state of Illinois.

And thereupon your orator complains and says that he had heretofore filed his original bill in said cause, and issue has been joined thereon and said cause has been referred to the master in chancery and proof taken thereon; that since the filing of said original bill and issue joined thereon, and since the reference and taking of proof as aforesaid, your orator has, by leave of this Honorable court, filed its supplemental bill on which issue has not yet been joined.

Your orator further showeth, that since the filing of its original bill herein and proceedings upon the same as aforesaid, and since the filing of its supplemental bill as aforesaid, and within the last few weeks another child has been born to Frank C. and Maria L. Taylor, two of the defendants to said original and supplemental bill, namely, Katherine Taylor, the defendant above named.

Your orator further showeth that said original and supplemental bills, pray, amongst other things, for the foreclosure of five certain trust deeds owned and held by your orator, and for the execution of certain trusts specified in a certain trust deed made by said Frank C.

and Maria L. Taylor to one Ira Scott, all which is fully set forth in said original and supplemental bill; that said Katherine Taylor, at her birth, became one of the *cestuis que* trust under the said trust deed to Ira Scott, and interested in the premises covered by the trust deeds which your orator seeks to foreclose as aforesaid, and is a necessary party to the proceedings instituted by your orator's aforesaid original and supplemental bill, that the fact of the birth of said Katherine Taylor has only been known to your orator a few days, and said Katherine Taylor is still a minor.

To the end, therefore, that the said Katherine Taylor may show cause, if she can, why your orator should not have the relief prayed in its original and supplemental bills hereinbefore filed, and may full, true and perfect answer make (but not under oath, answer under oath being hereby expressly waived), to all and singular the matters set forth in said original and supplemental bill hereinbefore filed as well as to what is set forth in this, its second supplemental bill; that your orator may have the benefit as against said Katherine Taylor of all the proceedings heretofore taken upon said original and first supplemental bill of all the proofs heretofore taken in said cause; and that your orator shall have such other and further relief in the premises as to your Honors shall seem meet and the nature of the case may require. May it please your Honors to grant unto your orator the writ of subpœna of this Honorable court to be issued and made returnable in accordance with the practice of said court commanding the said Katherine Taylor to appear before this court and answer the premises and abide such other and further order as your Honors shall make in said cause, and your orator will ever pray, etc.

FRANKLIN SAVINGS BANK,
Of Pawtucket, Rhode Island,

By W. H. SWIFT,
*Its Attorney.*

GRANT & SWIFT,
*Solicitors.*

W. H. SWIFT,
*Of Counsel.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

The Franklin Savings Bank, of Pawtucket, Rhode Island,
*Complainants.*
*vs.*
Frank C. Taylor, *et al.*
*Defendants.*
} *In Chancery.*

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 5th day of June, A. D. 1877.

Present: D. N. HILLIS, for defendants; GRANT, PRICE & BALDWIN, W. H. SWIFT, for complainant; N. P. NISELY, for the defendant, The Gowen Marble Company, and WM. H. BRADLEY appearing as guardian *ad litem* for the minor defendants.

W. H. Swift, solicitor for the complainant, offers in evidence on behalf of the complainant, a deed of trust from Charles H. Mulliken, Frank C. Taylor and Maria L. Taylor, to Francis S. Howe, dated August 23, 1873, and recorded in Cook county, Illinois, in book of record 303, upon page 227.

Also a coupon note for $9,000, dated August 23, 1873, payable five years after its date, to the Franklin Savings Bank, signed by said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor.

Also eight interest coupons, made by the same parties, bearing the same date and payable to the same order, for the sum of $427.50 each, being eight of the ten coupons made to evidence the interest of said principal note of $9,000.

The above mentioned deed of trust which is introduced in evidence, conveys in trust for the purpose therein expressed, lot one (1) in the subdivision of lot four (4) in block sixteen of Bushnell's addition to Chicago, in the county of Cook and state of Illinois.

Complainants solicitor further introduced in evidence on behalf of the complainant a certain other trust deed bearing the same date, between the same parties, and recorded in the recorder's office of Cook county, Illinois, in book 306 of records, upon page 207; which trust deed conveys for the purposes therein expressed, lot two (2), in the above mentioned subdivision.

Also a certain other principal note, made by the same parties for the sum of $9,000, dated August 23, 1873, payable to the order of said The Franklin Savings Bank, five years after its date, and eight

coupon notes made by said Taylor and said Mulliken, trustee, payable to the order of said bank, dated August 23, 1873, for the sum of $427.50 each; being eight of the ten coupon notes made to evidence the interest upon said principal notes of $9,000.

Complainants' solicitor also introduced in evidence on behalf of the complainant a certain other deed of trust, made by said Mulliken, trustee, and the said Frank C. Taylor and Maria L. Taylor bearing date said August 23, 1873, recorded in said recorder's office of Cook County, in book 242, of records upon page 614; which deed of trust conveys to Francis S. Howe, for the purpose therein expressed, lot four (4), in the above mentioned subdivision.

Also a certain other note for $9,000; bearing date said August 23, 1873, made by said Frank C. Taylor and Maria L. Taylor, and said Charles H. Mulliken, trustee, for the sum of $9,000, payable to the order of said, The Franklin Savings Bank, five years after its date.

Also eight coupon notes all made by the same parties, and payable to the same order and bearing the same date as said principal note, each for the sum of $427.50; being eight of the ten coupon notes made to evidence upon the interest upon said principal note of $9,000.

Said complainants' solicitor further introduced in evidence on behalf of the complainant, a certain other deed of trust made by said Frank C. Taylor, Maria L. Taylor, and Charles H. Mulliken, to the said Francis S. Howe, dated August 23, 1873, and recorded in the recorder's office of said Cook county, in book 242 of record, upon page 609, which deed of trust conveys for the purposes therein expressed, lot five (5), in the aforesaid subdivision.

Also a certain other note for the sum of $9,000, bearing date said August 23, 1874, made by said Frank C. Taylor, Maria L. Taylor and Charles H. Mulliken, trustee, and payable to the order of said The Franklin Savings Bank, five years after its date.

Also eight coupon notes made by the same parties, payable to the same order and bearing date as said principal note, each for the sum of $427.50, being eight of the ten coupon notes made to evidence the interest upon said principal note for $9,000.

Complainants' solicitor further introduced in evidence on behalf of said complainant, a certain other deed of trust, bearing date January 1, 1874, made by said Charles H. Mulliken, trustee, said Frank C. Taylor and Maria L. Taylor, to said Francis S. Howe, and recorded in the recorder's office of said Cook county, in book 338 of records, upon page 159, which deed of trust conveys to said Howe, for the purpose therein expressed, lots one (1), two (2), four (4), and five (5), in the aforesaid subdivision.

Also a certain note for the sum of $2,875, made by said Frank C. Taylor, dated January 1, 1874, and payable to the order of said The Franklin Savings Bank, two years after its date.

Also the coupon notes made by the same party payable to the same order, and bearing the same date as said principal note, for the sum of $143.75 each, being two of the four coupons made to evidence the interest upon said principal note of $2,875.

Said principal and interest notes being the same described in the respective trust deeds herewith introduced in evidence; and said principal and interest notes, and said trust deeds being the same, described in the bill of complaint filed in this cause.

The further hearing adjourned until Wednesday, June 13th, at 11 o'clock, A. M.

Further adjourned to 21st June, 1877, at 11 o'clock A. M.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

The Franklin Savings Bank, *et al.*, *Complainant.*
*vs.*
Frank C. Taylor, *et al.*, *Defendants.*
} *In Chancery.*

Testimony taken before Henry W. Bishop, master in chancery of said court on the part of the Gowan Marble Company, Tuesday the 3d day of July, A. D. 1877.

Present: Mr. SWIFT, of Grant & Swift, of counsel for complainant, and P. W. KINSLEY, Esq., of counsel for the Gowan Marble Company, and Mr. BROWN of the counsel for infant defendants.

And the witness below named Edgar H. Bradbury, a witness on behalf of the Gowan Marble Company, being first duly sworn, was examined in chief by Mr. Kinsley and deposes and says as follows:

Q. Please state your name, age, residence and occupation?
A. Edgar H. Bradbury; of full age; am secretary of the marble company.

Q. Were you secretary in the years 1872 and 1873?
A. Yes, sir.
Q. What is the business of the Gowan Marble Company?
A. Wholesale marble manufactory, also mantels.
Q. Where is its place of business?
A. No. 11 North Clark street in this city.
Q. Do you know Mr. Frank C. Taylor?
A. Yes, sir.
Q. Mr. Bradbury, you may state what contract, if any, was made between the Gowan Marble Company and Frank C. Taylor, Maria L. Taylor, or either of them, in relation to furnishing marble work for buildings?
A. On the 28th day of December, 1872, Mr. Taylor came to the office of the marble company and together with Mr. James A. Rich and myself made a contract for a certain lot of mantels to be put in houses that he was building then.
By Mr. SWIFT: Was the contract in writing?
A. The contract was entered, on the books,—the block of houses that he was building on the corner of Dearborn and Maple streets, I think—there was no regular contract. We went to work and put in the mantels as agreed and finished them by the 12th of the following May, that would be May, 1873, and June following, or July, I am not positive which, Mr. Taylor—I presented the bill to him and he gave me a check for $700, saying that we would have to wait another month for the balance. I saw Mr. Taylor several times after that, but to my knowledge he has never paid any more money on it.
Q. What was the nature of the marble work that you furnished these buildings?
A. They were mantels and grates with all the materials to go with them.
Q. Attached to the building?
A. Yes, sir.
Q. What was the value of the materials furnished and put into this building?
A. $1,490 and some cents; I don't remember the exact amount.
Q. That was the whole amount of the bill before anything was paid?
A. Yes, sir.
Q. At the time of this contract Mr. Bradbury, was anything said as to where this material was to be placed?
A. Yes, sir; in the houses that he was building on the corner of Maple and Dearborn streets.
Q. On which corner?
A. On the southeast corner.
Q. You could not give the description of it by lots and blocks?
A. No, sir; I could not.
Q. Which way do the buildings front?
A. Front west on Dearborn and north on Maple.

Q. How many buildings were there?
A. Five houses.
Q. All one block under one roof?
A. Yes, sir; under one roof.
Q. The materials that were furnished, were they, or were they not, of the quality required by the contract?
A. They were.
Q. State, Mr. Bradbury, whether at any time since you finished the contract on the 12th day of May, 1873, you have had any conversation with Mr. Taylor as to the price and quality of the work?
A. At the time he paid the $700 he said nothing but what he was satisfied. I saw him several times after that and he never said anything, but that the materials were satisfactory, until about a year and a half ago, when he said that there were some things that he did not think were right, that he claimed a large discount on. I had several conversations with him about settling, he offered a certain kind of settlement—that is to turn out some goods, and I finally made an agreement with him to go up to the houses and see what was wrong about the mantels so that we could better judge as to what should be done. I went up to the houses according to agreement, and he took me through the houses. He said that in the house that he was going to occupy in the front room he was to have a shelf with a certain kind of moulding. The mantels were selected by him, and designs of the mouldings were indicated when he bought the mantels, he wanted a particular kind of moulding and he claimed that it was not done as he wanted it; it would not have cost more than five dollars to change and put in a larger shelf; we would have done it for that amount at any time. He then took me to the south house away up into the top story; he said that he had to have two hearths taken up and replaced, he said the old ones were not wide enough and that it cost him $16; I asked him if there was anything else, he said no. those were all the claims. He did not set any price on the parlor mantels, but they could have been changed for five dollars at any time—anybody would change them for that.
Q. About how much would cover the whole deficiency as he stated?
A. I presume that he paid $16 for the hearths, which would be exorbitant, and $5 for the mantel, that would be $21.
Q. Was the work done according to the contract?
A. So far as I know the work was done to the contract; if he had wanted wider hearths we could have put them in as well as anybody.
Q. This work was done, you say, on the 12th of May?
A. On the 12th of May, 1873.
Q. On what date, if you know, was the $700 paid?
A. I cannot recollect the date, I should judge in the latter part of June or the fore part of July; it was over a month after the job was completed.
Q. Taking the $700 away from the $1,490 would leave how much?

A. $700 from $1,490 leaves $790.

Q. You can not state the exact date when the $700 was paid?

A. No, sir.

Q. Have you computed any interest on the $700 due?

A. I have not computed it.

Q. Just make a computation?

A. It would make $196.32, at six per cent. up to the present time.

Q. This on the $790?

A. Yes, sir.

Q. That would make it altogether how much?

A. $986.32.

Q. At the time of making this contract with Mr. Taylor what arrangement was made, if any, as to the time of payment?

A. He did not ask for any time at all on the bill.

Q. Was it to be paid when the work was done?

A. When the work was completed, the building was ready.

Q. Immediately after the work was completed and at the time of the payment of the $700, was any objection made by Mr. Taylor as to the quality of the work or the quality of the material?

A. No, sir; not in any particular.

Q. Or the amount of the work?

A. No, sir.

Q. The Gowan Marble Company filed a petition, did they not, to enforce a mechanic's lien on this property?

A. Yes, sir.

Q. Do you know when that was filed?

A. It was filed in December; the petition was filed in November.

Q. Do you know who were made parties defendant?

A. I did know at the time; it has passed my memory now.

Q. At the time of making this contract what interest did Mr. Taylor claim to have in this property on which these houses were being put up?

A. He claimed to own them.

Q. Did his wife, Maria L. Taylor, take any part in the contract or examine the material in any way, or anything of the kind?

A. He was in several times before we put up these mantels; if I remember right his wife was in; my impression is with another lady.

Q. Do you know, as a matter of fact, whether his wife Maria L. Taylor knew of the erection of the buildings at that time?

A. Yes, sir.

Q. Do you know Mr. Charles H. Mulliken?

A. I do not.

Q. Do you know Mr. Ira Scott?

A. Not to my knowledge.

Q. Did Mr. Ira Scott or Mr. Charles H. Mulliken ever make any contract with you about these mantles?

A. Not to my recollection.

Q. Did you take any pains to learn anything about the land on which these houses were built, at the time you furnished the mantels?

A. We knew of some contractors who were furnishing materials and Mr. Roche told us that they said they owned the lots and it was all right.

Q. Mr. Roche told you that Mr. Taylor owned the land and it was all right?

A. That he had talked with other parties and that it was all right.

Q. Then you did make some inquiries and concluded that it was all right?

A. That is what Mr. Rich told me.

Q. Did Mrs. Taylor say anything about these mantels?

A. She came in once or twice; she rode up to the door; she came a number of times in a carriage.

Q. What would she ask about then?

A. She would ask about how we were getting along, and would say that in the corner house she would like to have them put in first.

Q. Mr. Bradbury, when Mr. Taylor made this contract, did he make it with you or Mr. Roche?

A. He made it with Mr. Roche and myself together.

Q. Did you have any conversation with Mr. Taylor at that time?

A. Yes, sir; I did. I entered up the order on the books myself.

Q. Were you not keeping the books of the concern at that time yourself?

A. No, sir; we had a bookkeeper then.

Q. Who did the most of the talking with Mr. Taylor?

A. Mr. Roche generally talks more than I do; I presume he did most of the talking.

Q. Mr. Roche really sold the mantels, didn't he?

A. He and I were together; I don't know how you would take it.

Q. Who showed the samples?

A. Mr. Roche and I were together, and I went around with Mr. Taylor and Mr. Roche and knew every sample he examined.

Q. Mr. Roche was with you?

A. Yes, sir; we were together.

Q. You think Mr. Roche would be as likely to remember what occurred as you would?

A. I should say he would.

Q. Now what do you say as to the kind of mantels furnished?

A. He bought according to the samples that were put up; they were to be good mantels. In his best rooms was to be white mantels with a different shelf. The mantels were put up as ordered; Mr. Taylor claims that the shelf was not changed. The mantles were put up just as good as the contract called for.

Q. Mr. Bradbury, when you speak of Mr. Taylor's selecting the mantels, you mean that he selected by samples?

A. He did.

Q. And the mantels were manufactured then?

A. Yes, sir.

Q. Is there any distinction between white marble and pure white marble?

A. We do not make that distinction; we have a variegated marble and a white marble.

Q. Did not Mr. Taylor select, by sample, a pure white marble for all the mantels on the first floor of all the houses?

A. No, sir; there was no such selection made.

Q. For the front room of the first floor?

A. No, sir.

Q. He didn't make a selection of pure white mantels for all the front rooms on the first floor of all the houses?

A. No, sir; he did not.

Q. You are quite sure of that?

A. I am quite positive.

Q. Were certain mantels selected for the front rooms?

A. We selected by numbers.

Q. He selected in relation to the quality and color and certain mantels for the front rooms for the first floor?

A. They were all Rutland average marble.

Q. Are those pure white marbles?

A. No, sir.

Q. Are they variegated?

A. There is a little color in them.

Q. Then the mantels that you put up were mantles with a little color in them?

A. They were according to the—

Q. They were mantels with a little color in them?

A. Yes, sir; there was a little.

Q. Did not Mr. Taylor ever claim that in that order he made a contract to buy white marble mantels?

A. No, sir; Mr. Taylor never made that claim to me.

Q. Do you know that Mr. Taylor ever made any complaint of that kind to any of the officers of the Gowan Marble Company?

A. No; I never heard any complaint until two or three years after.

Q. Now, in relation to this marble, you are quite sure that Mr. Taylor picked out Rutland marble with some color in it for mantels in the front rooms of all those houses?

A. The mantles that he selected had a little color in them.

Q. In all of them?

A. Yes; except the front room in the corner house, that he wanted different.

Q. That was the only one?

A. Yes, sir.

Q. You make a distinction between white marble and pure white marble?

A. Of course there is a difference; there is some color in it.

Q. Did Mr. Taylor contract for the price on each of the mantels at the time he bought them?

A. Yes, sir.

Q. The prices were specified?

A. The prices were specified.

Q. You have said, I think, that neither Mr. Scott nor Mr. Mulliken were informed in regard to this matter.

A. I don't know them.

Q. You never heard their names mentioned in connection with this matter, neither by Mr. Taylor nor anybody else?

A. No, sir; not as connected with that.

*Further Cross-Examination by Mr. Swift.*

Q. Mrs. Taylor was not present when this contract was made?

A. No, sir. It was made by Mr. Taylor.

Q. When Mrs. Taylor came in she did not change the contract in any particular?

A. No, sir; not Mrs. Maria L. Taylor.

Q. She came simply and examined what her husband had done?

A. She came with him at first; they looked over the mantels; they were in several times, and finally they selected the mantels which they bought.

Q. Your contract was made with Mr. Taylor, yourself?

A. Yes, sir.

Q. When you presented your bill it was made out against Mr. Taylor, was it not?

A. Yes, sir.

Q. Your book shows charges against Mr. Taylor still?

A. Yes, sir.

Q. You say you entered this contract upon the books; you simply entered the order, I suppose?

A. Yes, sir.

Q. You don't mean to say that while Mr. Taylor was in there in the building and you wrote out the contract in his presence?

A. I wrote out the order in his presence on the books, and he examined it to see if it corresponded with his selection.

Q. You wrote it simply as an order?

A. Yes, sir.

Q. At that time Mr. Taylor made an express contract with you for all the materials and labor subsequently furnished for these houses?

A. Yes, sir; he made the contract.

*Re-direct Examination by Mr. Kinsley.*

Q. Was all the materials furnished in his first order, included in the first order?

A. No, sir; he subsequently ordered some other material; some additional material.

Q. The materials that you furnished were of the quality and ordered?

A. Yes, sir.

Q. And the prices charged were the prices agreed upon?

A. Yes, sir.

Q. Was there any of the mantels that were described as Italian marble?

A. Yes, sir; there was Italian marble and Rutland marble.

Q. And others of Rutland marble?

A. Yes. sir.

Q. The order that called for Italian marble was put up in Italian marble, and the one that called for Rutland marble was put up in Rutland marble?

A. Yes, sir.

Q. When you say that you made a contract with Mr. Frank C. Taylor, you mean that he was the only person that you talked with?

A. Yes, sir.

Q. How many times was Mr. Taylor there before the order was given?

A. Twice, before the order was given.

Q. Was anybody with him at either time?

A. His wife was with him twice.

Q. Was she there at the time the order was given?

A. She was not.

Q. She had examined the stock there before?

A. Yes, sir; with Mr. Frank C. Taylor.

EDGAR H. BRADBURY.

Subscribed and sworn to before me, this 10th day of July, A. D. 1877.

H. W. BISHOP,

*Master in Chancery of the Circuit of the United States, for the Northern District of Illinois.*

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank, *et al.*,
*Complainants.*
*vs.*
Frank C. Taylor, *et al.*,
*Defendants.*

Testimony taken before Henry W. Bishop, master in chancery of said court, on the part of the Gowan Marble Company, Tuesday, the 3rd day of July, A. D. 1877.

Present: Mr. SWIFT, of Grant & Swift, of counsel for complainants, and W. P. KINSLEY, Esq., of counsel for the Gowan Marble Company, and Mr. BROWN, of counsel for infant defendants.

E. L. GOWAN, a witness on behalf of the Gowan Marble Company, being first duly sworn, was examined in chief by Mr. Kinsley and deposes and says as follows:

Q. Please state your name, age, residence and occupation?
A. E. L. Gowan; of full age; residence in Joliet, Illinois.
Q. You are president of the Gowan Marble Company?
A. Yes, sir.
Q. And you were in the year 1872 and 1873?
A. Yes, sir.
Q. State, Mr. Gowan what you know about this contract with Mr. Taylor, if anything?
A. I know of Mr. Taylor's coming into our establishment, No. 11 North Clark street, and looking at some mantels, and his wife came with him; I saw her once or twice, both, they decided upon what ones to take—remember being there when Mr. Taylor came in and gave the order.
Q. Did you hear the order given, Mr. Gowan?
A. I did not hear the talk in regard to all mantels, but when the order was entered up, Mr. Taylor reviewed it and made a memorandum in his book. There was some mantels selected on the lower floor and some on the upper floor; after the selections were made they came up from the lower floor entered the order and he made a memorandum in a small book.

Q. He made the memorandum?
A. Yes, sir.
Q. Was his wife there?
A. No, sir.
Q. What, if anything, did you have, that is to say, personally, to do with the manufacture and delivery of these materials?
A. I looked at the work—I superintended the completion of the work at the building; went there and measured the chimney breasts to see that the shelves were of the right length. Saw about the putting up of his wood mantels which we did not furnish in the contract; we furnished some marble facings for them, grates, etc.
Q. Did you attend to the delivery of the mantels, Mr. Gowan, yourself?
A. I did not lug them up in the building.
Q. Did you see them and examine them before they left your establishment?
A. Yes, sir. Not all of them but nearly all of them, I examined.
Q. Do you know whether or not they were made in accordance with the order that Mr. Taylor left there for them.
A. Yes, sir; according to the numbers entered on the book.
Q. And the quality?
A. Yes, sir. I know that Mr. Taylor never claimed but what the quality was good—never objected to the quality of the mantels when I called on him for pay.
Q. How many times did you call on him?
A. In 1873, I called several times; I called in July, when he made a payment; he said then he thought he could make another payment in August.
Q. That is the time that he paid the $700?
A. Yes, sir.
Q. At that time Mr. Taylor knew that the mantels were set up in the building; he had seen them?
A. Yes, sir; I had been there with him.
Q. Do you say that Mr. Taylor made a memorandum in his book at the time the order was entered in your book?
A. Yes, sir.
Q. Did he compare that memorandum with yours?
A. We talked about his memorandum.
Q. He spoke about its being correct at the time?
A. I can not say that his exactly corresponded.
Q. At the time, what arrangement was made as to payment?
A. It was to be cash when the work was done.
Q. When the work was completed?
A. Yes, sir.
Q. Do you know what time the work was completed?
A. About between the 12th and 15th of May, 1873.
Q. The order was given, when?
A. It was given the latter part of December, 1872.

Q. At the time it was given was anything said as to where these mantels were to be placed?

A. Yes, sir.

Q. Where were they to be placed?

A. In a block of houses that he was building on the corner of Dearborn and Maple streets.

Q. You have seen those buildings, Mr. Gowan?

A. Yes, sir; I have seen them; I superintended the work.

Q. The buildings were being constructed at the time?

A. Yes, sir.

Q. There was five buildings in one block?

A. Yes, sir.

Q. You can not say whether under one roof or not?

A. I can not say.

Q. You could not give a description of them by lot and blocks?

A. No, sir.

Q. What corner is it on of Maple and Dearborn streets?

A. It is the northeast corner, the building fronting west; the corner house is the largest.

Q. You were familiar with the value of such marble work?

A. Yes, sir.

Q. The price was agreed upon, however?

A. Yes, sir.

Q. The price which you charged was the price agreed upon for that kind of work at that time?

A. Yes, sir; there was some deduction made from our regular price; there was quite a bill.

Q. The entire bill—do you know what the amount of it is?

A. $1,490.74.

Q. That is the entire amount?

A. Yes, sir.

Q. And $700 was paid?

A. Yes, sir.

Q. The bill for $1,490 is the original bill which you presented to Mr. Taylor?

A. Yes sir.

*Cross-Examination by Mr. Brown.*

Q. Mr. Gowan, you never saw Mr. Ira Scott, or Mr. Charles H. Mulliken about this matter?

A. No, sir.

Q. Did you take any pains to find out who owned that property before you put those mantels in?

A. I don't know what special pains we took, I know we learned from some source that the buildings were Mr. Taylor's, or his and his wife's together; I don't remember who told us.

Q. You supposed the property to be Mr. Taylor's, did you not?
A. Yes, sir; I may have learned afterwards that his wife had some interest in it.
Q. Did you ever make any contract with Mrs. Taylor?
A. No, sir; she was there and looked at the mantels.
Q. Did you ever know that that property was owned by a trustee for her benefit?
A. I did not know at the time they selected the mantels.
Q. When did you first know it?
A. I did not know it until several months after the work was done.
Q. Several months after the work was done?
A. Yes, sir. I think so.
Q. You did not take any particular pains to find out who owned the property?
A. No, sir.
Q. You supposed that you were dealing with Mr. Taylor?
A. Yes, sir; he said that he was building the houses.
Q. He did not speak of any other person owning them?
A. No, sir; he was building the houses, and one of them he was going to occupy.
Q. He did not represent that he was acting as agent for anybody?
A. I could not say.
Q. You don't think he did, do you?
A. I don't think he did.
Q. You don't remember that he did?
A. I can't say.

*Further Cross-Examination by Mr. Swift.*

Q. Mr. Gowan, as I understand, the contract between Mr. Taylor and the Gowan Marble Company, covered the furnishing of the mantels and grates, and also the setting of them in their places?
A. Yes, sir; the whole, that is part of the work. He ordered afterward some grates for the wood mantels, which was not entered in that first order. He had some wooden mantels made for it from some source; he ordered some marble facings and grates and we furnished them.
Q. Which was in addition to this first order or contract?
A. Yes, sir; the total amount of $1,490 includes the grates and facings of five wooden mantels.
Q. The total amount of the bill?
A. Yes, sir; the total amount of the bill.
Q. The orignal contract was for certain mantels of a specified style and material, and at a certain price.
A. Yes, sir.

Q. And that is covered by your bill, except the extra marble work, together with the wooden mantels?

A. Yes, sir; the original contract. I would like to change myself a little there—there was two marble thresh went with a subsequent contract; that went with the wood mantels.

*Re-direct Examination by Mr Kinsley.*

Q. Have you made a computation, Mr. Gowan, as to the amount of the first order?

A. The entire amount was $1,323.64.

By Mr. SWIFT: That is according to the figures agreed upon between the Gowan Marble Company and Mr. Taylor at the time of this contract, was it?

A. Yes, sir.

Whereupon further examination of witnesses in this case was adjourned to 11 A. M., July 10, 1877.

E. L. GOWEN.

Subscribed and sworn to before me,
this 10th day of July, A. D. 1877.

H. W. BISHOP,

*Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

The Franklin Savings Bank, of Pawtucket, *Complainants.*
*vs.*
Frank C. Taylor, *et al.*, *Defendants.*

Testimony taken before Henry W. Bishop, master in chancery of said court.

Saturday, the second day of March; A. D. 1878.

Present: WILLIAM H. SWIFT, of the firm of Grant & Swift, solicitors for complainant; EDWARD O. BROWN solicitor for Orville Peckham guardian *ad litem* for the infant defendant; SAMUEL S. MCNAUGHTON, solicitor for Gowan Marble Company; E. L. JAYNE, solicitor for Grant & Price, and the estate of John Price.

FRANK C. TAYLOR, a witness on behalf of the infant defendants, being first duly sworn, was examined in chief by Mr. Brown and deposes says as follows:

Q. Please state your name, age, residence and occupation?
A. My name is Frank C. Taylor; I am of lawful age; I reside in Chicago, I am in the real estate business.
Q. You are one of the defendants in this cause?
A. I am.
Q. The bill in this cause is brought to foreclose a trust deed dated on the 23rd day of August, 1873; will you state if you are acquainted with the circumstances under which that trust deed was made?
A. I am acquainted with those circumstances.
Q. Was there an application in writing made for the loan secured by that trust?
A. There was.

Q. By whom was the application made?
A. By me.
Q. By you individually?
A. Yes, sir.
Q. Will you state whether at the time this application and trust deed were made, there was any indebtedness existing from to the Franklin Savings Bank?
A. There was.
Q. State the circumstances concerning that indebtedness; what was it and how did it accrue?
A. I owed them $30,000.
MR. SWIFT: What is the paper you hold in your hands?
A. A note for $30,000, dated June 20, 1872, payable to the order of George W. Newall, treasurer. I owed him $30,000 as evidenced by the note described above, in my answer to Mr. Swift's question.

Solicitor for the infant defendants offers in evidence the note above referred to, and the same is marked "Exhibit A."

Q. Did this note of $30,000 purport to be secured in any manner?
A. It did.
Q. How?
A. By a trust deed signed by myself and wife on a piece of property at the corner of north Dearborn and Maple streets.

Solicitor for the infant defendants offer in evidence a certified copy of the trust deed above referred to, and the same is marked "Exhibit B."

Q. Who delivered, if it was delivered, the trust deed of the date of August 23, 1873, of which you have spoken, to the Franklin Savings Bank?
A. I did.
Q. In what way was that delivery made, personally, or through the mails?
A. I don't remember, but I presume it was delivered by mail, because that was my custom.
Q. I have spoken of a trust deed of the date of August 23, 1873, by inadvertance; do you mean in speaking of those four trust deeds of that date as described in the complainant's bill?
A. I do.
Q. These four trust deeds purport to secure four notes of $9,000 each, do they not?
A. They do.
Q. Were those notes delivered with the trust deed or before the trust deed to the Franklin Savings Bank?
A. They were delivered before the trust deed, because the trust deed was retained here to be recorded and sent forward after it came from the recorder's office.

Q. Did you receive the money on delivery of those notes?
A. I did not. I received a small sum of money; a small balance that was due.
Q. Did you deliver those notes?
A. I am not certain whether I delivered those notes personally or by mail.
Q. By whom were those notes signed?
A. They were signed by my wife and myself, and I think by the trustee, Mr. C. H. Mulliken.
Q. You say that you do not know whether you delivered those notes personally or by mail?
A. I don't remember.
Q. You delivered them, however, one way or the other?
A. I did. I am sure of that.
Q. How much money did you receive from those four notes of $9,000 each secured by those trust deeds?
A. Three thousand five hundred and nine dollars and ninety-five cents ($3,509.95).
Mr. SWIFT: What paper is that you hold in your hand?
A. This (indicating paper) is a letter from the Franklin Savings Bank.

Solicitor for the infant defendants offers in evidence the letter above referred to, and the same is marked "Exhibit C."

Mr. BROWN: What other consideration did you receive, if any, for the four notes of $9,000 each and the trust deed alluded to?
A. I received my old note of $30,000 already described in this testimony and marked "Exhibit A."
Q. Did Mr. Mulliken the trustee and one of the defendants in this suit or any other person, receive any further consideration from the Franklin Savings Bank than the consideration you have mentioned?
A. They did not.
Q. To whom was this note of $30,000 that you speak of delivered?
A. To me.
Q. Has it been in your possession ever since?
A. It has.
Q. I will ask you if the amount of $30,000 was loaned to you by the Franklin Savings Bank upon this note?
A. It was.
Q. Was that money loaned to you individually?
A. It was.
Q. Was this note of $30,000 given to the Franklin Savings Bank and the money received thereon at the time of its purported date?
A. The money was received on or about that time.

Q. Within how short a period?

A. Within a week or two as near as I can remember.

Q. I will ask you if this letter marked "Exhibit C" is a letter received by you from the Franklin Savings Bank?

A. It is.

Q. This letter speaks of an enclosure of a check for $3,509.95, was that the check alluded to by you in your examination?

A. It was.

Q. It makes up the sum of interest due as follows: After mentioning the several amounts the total amount is $2,490.05; will you state the meaning of that from your knowledge of the transaction between yourself and the bank?

A. The amount of interest that I owed the bank at the time they sent me the check referred to, was $2,490.05.

Q. It was interest due upon this $30,000, was it not?

A. It was interest on the above note of $30,000.

Q. When you speak of the moneys having been received at the time of this note, was it all received at that time or was the money received at different times?

A. No, sir; now that I read this letter I remember it was not all received at one time. It was paid to me at different dates which I find in this letter to be $10,000 July 8, 1872, $10,000 October 15, 1872, $5,000 November 1, 1872, $5,000 December 13, 1872.

Q. But the first instalment of the $30,000 was paid as you said, within a week or so of the date of this note of $30,000?

A. It was paid within two weeks.

Q. The bill in this cause seeks also to foreclose a trust deed from Charles H. Mulliken trustee, Frank C. Taylor and Maria L. Taylor to Francis S. Howe trustee of the date of January 1, 1874, purporting to secure a note of $2,875. I will ask you if you remember the execution of such a trust deed?

A. I do.

Q. And the circumstance under which it was made?

A. I owed the bank that amount of money and gave them that trust deed and note to secure it.

Q. Did you owe the bank individually that sum of money?

A. I did.

Q. Did you receive any cash at that time for the delivery of that note and trust deed?

A. I did not.

Q. Did Mr. Mulliken or any of the defendants in this bill receive any consideration?

A. They did not.

Q. What was the indebtedness for which this was given?

A. As I remember it was for some interest that was past due and unpaid on a loan made to the Riverside Improvement Company.

Q. Did Mr. Mulliken as trustee or any of the defendants in this cause except yourself have any interest in this matter?

A. They did not.

Q. Was the trustee, Charles H. Mulliken, requested by you to sign those trust deeds mentioned in the complainants bill?
A. He was.
Q. Is Frank C. Taylor, Jr., a son of yours?
A. He is.
Q. What is his age?
A. Twelve.
Q. What other children have you?
A. I have four other children.
Q. State their names please?
A. Maria Louisa Taylor.
Q. How old is she?
A. I think she is between ten and eleven.
Q. Not over eleven, is she?
A. No, sir.
Q. The next?
A. The next is Josephine Sherman Taylor.
Q. How old is she?
A. She is nine. The next is Alexander Taylor, he is four. The next one has no name.
Q. How old is that child?
A. Well, the youngest is ten months old.
Q. The children are the children also, are they not, of Maria Louise Taylor, one of the defendants in this suit?
A. They are.

Solicitor for the infant defendants offers in evidence a deed from Maria Louise Taylor and Frank C. Taylor, to Ira Scott, date June 13, 1871, acknowledged June 13, 1871, recorded June 15, 1871, in book 673 of deeds, page 1, and recorded also on the 3d of July, 1877, in book 625 of records of Cook county, page 287, and the same is marked "Exhibit D."

Q. Do you recognize that deed.
A. I do.
Q. Is that deed executed by yourself as one of the grantors?
A. It is.
Q. The first signature to that deed is yours, is it not.
A. No, sir; the first is Mrs. Taylors.
Q. The second signature is yours?
A. Yes, sir; the second is mine.
Q. Did you see the signature of Maria Louise Taylor—
A. I did.
Q. —Made by her?
A. I did.
Q. I will ask you whether you and Maria Louise Taylor ever made another deed of the property mentioned therein to Ira Scott?
A. We never did.
Q. I will ask you in whose possession this deed was from the date of the fire of October, 1871, until the latter part of June, 1877?
A. It was in my possession.

Q. What was your business in 1872?
A. Real estate and loans.
Q. Did you have any connection with the Franklin Savings Bank, the complainant in this suit?
A. I did.
Q. What?
A. I loaned money for them.
Q. You were acting as their loan agent here in the city of Chicago, were you not.
A. I suppose that is what it would be called.
Q. How long have you been so acting?
A. I think about eighteen months.
Q. That is, about eighteen months prior to the time when you gave this note for $30,000.
A. Yes, sir.
Q. How long did you continue so to act after giving this note.
A. Well, I think two years and a half; possibly three years. I am not certain about that.
Q. Did they have any other agent beside yourself during that time, representing them here in Chicago?
A. Not that I know of.
Q. At the time that you borrowed from them this $30,000 did you furnish them with any lawyers opinion of title. Did you have any examination of the title made?
A. I did not.
Q. At the time you made this loan?
A. I did not.
Q. Of course you were aware at the time that you and your wife executed this trust deed to secure the note of June 26, 1872, that the trust deed to Ira Scott introduced in evidence as "Exhibit D," had been made and recorded, were you not.
A. Yes, sir.
Q. Did you make application to Mr. Scott, as trustee, to execute a mortgage or trust deed with you and your wife?
A. I did not.
Q. Did you at any time subsequent to the fire, make such an application to Mr. Scott?
A. I think I did; but I am not certain.
Q. Is it not a fact that prior to the time that you and your wife executed the trust deed of June 26, 1872, you applied to Ira Scott to join with you and your wife in a mortgage and he had declined?
A. No, sir; I never remember doing anything of the kind.
Q. Why did you not make that application to him?
A. I did not think it was necessary.

Q. You knew that you and your wife had conveyed the property to Ira Scott in trust partly for the benefit of the children of yourself and your wife, did you not?

A. At the time the trust deed was made, of course I knew what was in it.

Q. On the 26th of June, 1872, when you executed the trust deed for the use of the complainant in this suit, you knew, did you not, that you and your wife had made a trust deed conveying the same property to Ira Scott partly for the benefit of the children of yourself and your wife?

A. Yes, sir.

Q. How long had you been in the real estate business at that time?

A. About a year.

Q. What was your business prior to that time?

A. Wholesale grocery.

Q. Were you not at one time connected with some bank here in the city?

A. Yes, sir.

Q. When was that?

A. It was at that time.

Q. What do you mean by "that time?"

A. The date of that note—the time I made that loan.

Q. You mean the 26th of June, 1872?

A. Yes, sir.

Q. With what bank in the city were you connected?

A. The Fourth National Bank.

Q. You were connected with the Fourth National Bank in what capacity?

A. Vice-president.

Q. How long were you vice-president of the Fourth National Bank?

A. Previous to that time?

Q. At what time did you become connected with the Fourth National, and when did you cease your connection with it?

A. I became connected with it in 1870 and ceased in 1873.

Q. On the 26th of June, 1872, or during the year 1872 and prior to that time, how extensive had your business been as a real estate man and loan agent?

A. Well, I had done nothing in real estate except in connection with loans that I was making.

Q. How extensive, then, had been your business as a loan agent?

A. Well, in 1872, as far as handling the money was concerned, I suppose, two or three hundred thousand dollars, but I had nothing to do with the titles or the legal part of it.

Q. Who did have anything to do with the title?

A. My attorneys.

Q. Who are your attorneys?

A. Howe & Russell; and in some of the loans I made, Mattocks & Mason examined the titles.

Q. Was it your custom when you made loans to have an examination of the abstract of title of the property on which you made a loan, made by your attorneys, and the proper certificate of title made?

A. It was.

Q. That was your custom in loans that you made for the complainants in this suit, was it not?

A. It was.

Q. Why did you not have it done when you procured this loan of $30,000.

A. Because I considered the title good in that. At the time I bought the property years previous, the title of course was examined and no change had ever been made in it; so I considered it perfectly good.

Q. How many years previous had you bought the property?

A. I think it was in 1867—1866 or 1867.

Q. Is it not the fact that you knew at the time you procured this loan of $30,000 that the title was in such shape because of your making a trust deed to Ira Scott, and because of the destruction of the records by fire that you could not obtain a certificate to forward to the complainant that this title was good?

A. I did not.

Q. Is it not the fact that you purposely avoided having an examination of title made in this case?

A. It is not.

Q. You received the $30,000 for which you gave your note on the 26th of June, in installments, you say?

A. Yes, sir.

Q. Was it by your own request that it was paid over to you in instalments?

A. It was not.

Q. How happened it that it was paid to you in instalments?

A. Mr. Newell said it would be more convenient for them to pay it in instalments—more convenient for the bank.

Q. Well, was it just as convenient to you to receive it in instalments?

A. It was.

Q. According to the letter which you have introduced in evidence as Exhibit C, this money was paid to you $10,000 on the 8th of July, 1872, $10,000 October 15 of the same year; $5,000 November 1, and $5,000 December 13; all in 1872, and interest was charged you only from the time that that money was paid to you. Wasn't that under an arrangement made between you and the bank, the complainant, at the time you made the application?

A. I think it was.

Q. You think that this arrangement was made for the convenience of the bank and not for your convenience.

A. I do.

Q. Is it not the fact that you made an application to the bank for this loan of $30,000, and request that the money should be paid over to you in instalments for building purposes, and that therefore you should only be obliged to pay interest on it from the time that the instalments were paid?

A. I don't think that was the case, because I could have used the money.

Q. Are you positive that that was not the case?

The WITNESS: I must correct my answer above, because I find by referring to the original application—

Mr. MCNAUGHTON: A copy you mean?

A. No, sir; the original. I supposed it was forwarded and remained there, but I find it has been returned to me. I find by referring to this original application, which I find is here, that I did ask to have the privilege of taking the money as I needed it for building purposes, but I am sure that that arrangement was made agreeably to a suggestion of Mr. Newell, the treasurer of the bank.

Q. And you still swear positively, do you, that Mr. Newell, the treasurer of the complainant, suggested that that arrangement would be for the convenience of the bank?

A. I do.

Q. Was that suggestion made in writing?

A. I think not. I think it was made when I was at Pawtucket in his banking office.

Q. When you were in Pawtucket in 1872?

A. I think I was there a short time before this loan was made.

Q. Are you positive about that?

A. Yes, sir; I am positive that I talked the matter all over about this loan in Pawtucket with one or two of the directors and Mr. Newell.

Q. In your direct examination you testified that the application for this loan of $30,000 had been forwarded to the bank, when you were asked where the application was, did you not?

A. Yes, sir.

Q. At the time you held the original application in your hand, while you were testifying, did you not?

A. Yes, sir. I thought it was a copy because my attorney had just told me so, or Mr. Brown, rather, just told me so.

Q. Will you swear to anything Mr. Brown tells you?

A. Well, yes—most anything. You will see on the back of that, Mr. Newell's signature accepting it. There may be another one here marked "copy." I have not looked at these papers for years to read them. This is the one you saw marked copy (producing paper).

Solicitor for the infant defendants offers in evidence the application above referred to, and the same is marked "Exhibit F."

Q. Where did you live prior to the fire?

A. At the corner of Maple and Dearborn streets.

Q. Upon the premises described in the bill of complaint?
A. On the same lot; yes, sir.
Q. Was there any other house upon the premises described in the bill of complaint except your dwelling house before the fire?
A. No other.
Q. Your dwelling house was burned in the great fire of October 1871, was it?
A. It was.
Q. Were you doing anything with those premises in the summer of 1872?
A. I had begun to build a block of buildings in the summer of 1872.
Q. That building was progressing during the summer of 1872, was it?
A. Yes, sir.
Q. A block of dwelling houses?
A. Yes, sir.
Q. How many in number?
A. Five.
Q. This $30,000 that you received from the complainant in this suit, in instalments, as described in the letter marked "Exhibit C," and for which you gave your note introduced in evidence as "Exhibit A," was used in erecting this block of buildings, was it not?
A. I am not certain whether all of it was used or not.
Q. How much of it can you be certain was used?
A. I can not speak certainly of that.
Q. Why can you not speak certainly about that?
A. Because I had other moneys at the same time that I was using.
Q. Any other reason?
A. No, I think not.
Q. Do you remember that a bill in chancery was filed in the Superior court of Cook county by Howe & Russell as your attorneys, and in your name against Ira Scott and others?
A. I can not answer that question without getting some information.
Q. What information?
A. Well, in the first place I should want to know whether any such bill was ever in chancery or not. I am not familiar enough with the courts of law to know whether it was in courts of chancery, or where it was.
Q. Did Howe & Russell, as your attorneys, or in your name bring any suit in the Superior court of Cook county, in this state, against Ira Scott and others?
A. That I couldn't answer because I don't know what court any such suit was brought in. I will state the facts as near as I can remember them in connection with this matter.
Q. Just confine yourself to answering my questions?

A. No, sir, I can not answer that question without getting information.

Q. Did you ever instruct Howe & Russell, as your attorneys, to bring any action of any nature in your name, in any court, against Ira Scott and others?

A. That I don't remember.

Q. You don't remember that?

A. No, sir; I can very easily find out though all the facts.

Q. Do you know whether Howe & Russell ever did, or whether any other person ever did in your name, bring any kind of an action in any court against Ira Scott and others?

A. I cannot say that I knew of any such action ever being brought in my name. I don't know in whose name it was bronght in.

Q. Will you look at the master's report, which I now hand you, made in the case of *Frank C. Taylor and Maria L. Taylor* vs. *Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor*, in the Superior court of Cook county, Illinois, and filed in said cause upon the 19th day of August, 1873, and look at the signature, "Frank C. Taylor," to one of the depositions annexed to said report, and state whether or not that is your signature?

Objected to as irrelevant.

A. Here is a very long document which I do not know anything about, or what it is. I see what I believe to be my signature on this document.

Q. Do you recollect such a suit as that?

A. I recollect a suit where I came before the master in chancery, Howe & Russell were the attorneys, the object of which suit being to restore title to the piece of property in this case, and to create a new trustee.

Q. Will you now look at the signature to the jurat to the document I show you, and which document purports to be the bill of complaint in the cause just mentioned, and filed in said cause on the 23rd day of July, 1873, and state whether or not that is your signature?

Objected to.

A. This document, which I do not know the contents of, appears to be my signature, or what I believe to be my signature.

Q. Will you examine that document?

A. (After examination of the document). Well, I have examined it.

Q. Will you now state whether you have seen this bill of complaint before?

Objected to.

A. I presume I have seen that document before because my signature is on it.

Q. Did you not hear it read?

A. I don't remember whether I did or not.

Q. From the jurat attached to said bill of complaint, it appears that you swore on the 23rd day of July, 1873, that you had heard it read, and that you knew the contents. Will you now state whether you have any recollection about this bill of complaint?

Objected to.

A. I have not read that bill of complaint and don't know anything about it, and cannot until I read it all through and consulted my attorney, it is so many years ago.

Q. Who is your attorney?

Objected to.

A. In that case Howe & Russell were.

Q. Who is the attorney you would have to consnlt in this matter?

Objected to.

A. I should consult Howe & Russell.

Q. Although you have taken this bill into your hands and examined it, and it appears to be sworn to by you, yet you now say that you cannot answer my question as to whether you have any recollection about the filing of this bill?

Objected to.

A. Not having read a word of it, of course I have no recollection about it.

Q. I want you to take it and make such examination of it now as will enable you to answer my question.

Objected to.

Adjourned to 2 o'clock P. M., this day (March 2, 1978.)

2 P. M., MARCH 2, 1878.

Parties met pursuant to adjournment and the examination of the witness, Frank C. Taylor, was continued by Mr. Swift as follows:

Q. During the recess have you examined the bill of complaint referred to in the last question?

A. Yes, sir.

Q. Is your recollection refreshed by that examination so that you are now able to state whether you heard the bill read about the time it was filed?

A. I will say that I think I heard it all read at the time it was filed.

Q. By whose direction was that bill filed.

A. Mine.

Q. With whom have you conferred since the hour of morning adjournment with reference to this matter?

A. I have conferred with no one except the attorney present.

Q. Do you allude to Mr. Brown?

A. Yes, and Mr. Jayne.

Q. Do you now recollect that you were a witnesss before the master in that cause?

A. I do.

Q. From your deposition in that cause, signed and sworn to by you, it appears that you testified that: "On or about June 26, 1872, my wife and myself executed and delivered to one Edward Brown, as trustee, of said Chicago, a certain deed of trust to secure the payment of a certain note owned by the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, which said deed of trust was afterwards, and on or about June 26, 1872, duly recorded in the recorder's office of Cook county." The Franklin Savings Bank, of Pawtucket, Rhode Island, alluded to in that testimony is the complainant in this suit, is it not?

A. Yes, sir.

Q. The trust deed and note alluded to in that testimony are the note for thirty thousand dollars ($30,000) introduced in evidence and the trust deed given to secure it, are they not?

A. Yes, sir.

Q. It appears that you also in the same deposition testified: "The said trust deed to Brown was on this property, the note and trust deed were given to secure the payment of money used in the improvement of said property. It has all been used in such improvement. The note was for thirty thousand dollars ($30,000);" having now refreshed your recollection by reference to this deposition, which was given on the 6th of March, 1873, what do you say about the fact that all that money was used in the improvement of that property?

A. That is explained by the fact that the improvements cost a good deal more than the amount of money I borrowed of the Franklin Savings Bank. That is the only way that I can explain it.

Q. I understand that on the 6th of March, 1873, you testified before Benjamin D. Magruder, as master in chancery in this cause in the Superior court, that all of this thirty thousand dollars ($30,000) had been used in the improvement of the real estate described in that trust deed, and in this bill of complaint, is that so?

Objected to.

Q. I do not mean to ask you whether it is so that you did then testify, but whether it is a fact that the money was so used as you did then testify?

A. As I said before this forenoon I think it is very doubtful about the particular amount that I received from the Franklin Savings Bank, having all of it gone into those improvements.

Q. Do you mean simply this, that you are doubtful whether the identical money that you received went into the improvements? Is that all you mean?

A. No; but I was receiving and paying out a good deal of money all that time; I was paying other indebtedness of my own. I didn't pay for those improvements agreeably to the days of their remittances as near as I can remember, and I should judge that some money that I received from them did not go into these improvements.

Q. You simply thought some of this money that you received may have been used for other purposes, and its place supplied by other money that came in from other sources, and that gone into the improvements?

A. Yes, sir.

Q. That is all you mean, isn't it?

A. Yes, sir; that is the fact of the case.

Q. But this $30,000 was borrowed by you of the Franklin Savings Bank for the purpose of putting up this block of buildings on this property, wasn't it?

A. Yes, sir.

Q. And either that identical money or its equivalent from other sources and, more too, went into the property, didn't it?

A. Yes, sir.

Q. You borrowed this thirty thousand dollars ($30,000) as you stated here in this bill of complaint filed in the Superior court, for the purpose of making these improvements, and to that purpose it or its equivalent which you replaced from other sources was devoted, was it not?

A. Yes, sir.

Q. In a letter introduced in evidence this morning as "Exhibit C," I find the interest due as follows: $10,000 paid July 8, 1872, that means, and all the dates of payments there, in that letter, mean the times at which the money was paid over to you, do they not?

A. Yes, sir.

Q. And the interest which is carried out here as due from you on these items is interest computed according to the terms of the $30,000 note from the time that these sums were paid over to you, is it not?

A. Yes, sir.

Q. So that the amount of $2,490.05 stated in this letter is the accrued interest on the installment making up this note of $30,000.

A. Yes, sir.

Q. And the balance of $3,509.95 you received at the date of this letter, or when you received this letter, which is dated July 28, 1873, is that so?

A. Yes, sir.

Q. So that you did receive altogether, including interest on the $30,000, the sum of $36,000 from the complainant, did you not?

A. Not any money at that time. I received my note $30,000—part of it.

Q. I do not ask you in reference to the time. I say you did receive. You received $30,000 in installments as shown in this letter; $10,000, July 8, 1872; $10,000, October 15, 1872; $5,000, November 1, 1872; $5,000, December 13, 1872; $2,490.05 in interest computed on these installments up to the times that this check was sent you, and $3,509.95 in the check, making in all thirty-six thousand dollars ($36,000)?

A. Oh, yes.

Q. This bill of complaint which you now say was filed under your direction in the Superior court and is sworn to by you contains I see, this, amongst other allegations. "And your orators further show that said premises were situated in a portion of said city that had been and continued to be valuable for residence purposes, and that the best judgment of your orators demand that said premises should be improved by the erection thereon of a block of fine first-class residences, but the said trust conveyance and all the records and copies thereof having as aforesaid been destroyed, the said Scott acting as such trustee, when requested by your orators, declined either to sell any portion of said premises, to borrow the necessary funds for said improvements or to execute a mortgage to secure any such loan until said trust should be fully restored by the decree of some court having competent jurisdiction of such matters." Your recollection now being refreshed by that language, what do you say further in answer to the question that I asked you this morning, as to whether you applied to Ira Scott, as trustee, to join with yourself and wife in executing a mortgage to secure this loan of $30,000, or any loan on this property.

Objected to.

A. The question that you asked me this morning, I supposed, referred to the first mortgage that was made and not the second.

Q. It did refer to the first mortgage.

A. I don't remember of making any application to him on the first mortgage, but I do remember having made an application when we wanted to restore the title and make the second mortgage.

Q. Let me read further to you from said bill of complaint directly following what I have already read: "Which could not have been had without great delay which would have been operated greatly to the prejudice and damage of said trust estate. In order therefore to protect and preserve said estate, said Frank C. Taylor, as the agent of said Maria L. Taylor, and at her request, borrowed a large sum of money, and with the same erected on said premises for the benefit of said trust estate, a block of five fine marble front residences, etc." From what I have read in other parts of it, it states that you made application to Ira Scott to join with yourself and wife in executing a mortgage or trust deed upon this property, in order that you might borrow money to make this improvement, and he refused to do so, and therefore you borrowed this $30,000, and with your wife executed the trust deed to Edward Brown, was not that the case?

A. I do not understand it so from that bill.

Q. Was not that the state of the facts?

A. No sir; not the first mortgage.

Q. Not the first mortgage?

A. It was the second.

Q. You didn't apply to Ira Scott to execute a mortgage then, you still say?

A. To secure the $30,000?

Q. Yes.

A. Or the thirty-six.

Q. I will put the question as I put it to you this morning. You are still positive, are you that prior to the time that you and your wife executed the mortgage given to secure the note for $30,000, you did not apply to Ira Scott to join in executing such a mortgage, or any mortgage upon the land?

A. I am very confident that I did not.

Q. Are you positive about it?

A. Yes, sir.

Q. It seems from this that you also stated in this bill that you made this loan of $30,000 as the agent of your wife. Is that so?

A. No; I borrowed the money on my own note, and my own responsibility.

Q. The note shows that you gave this note for it, but you said in this bill that although that transaction was in your own name that it was really made by you as the agent of your wife. Is that the fact or not?

A. I borrowed the money for myself, but I offered him a security property that I supposed belonged entirely to my wife. If that can be considered as being the agent of my wife, of course I was agent for my wife.

Q. In the bill of complaint filed in the Superior court already alluded to you say: "In order therefore to protect and preserve said trust estate, said Frank C. Taylor, as the agent of the said Maria L. Taylor and at her request, borrowed a large sum of money, and with the same erected on said premises, for the benefit of said trust estate, a block of five fine marble front residences," the large sum of money alluded to in what I have just read from the bill of complaint is as the balance of the bill shows, this sum of $30,000. Did you borrow that as the agent of your wife and at her request?

A. Only as stated before.

Q. What do you mean by "As stated before?"

A. I borrowed the money on my own individual note and offered them as security a piece of property that I supposed belonged entirely to my wife. If in doing that I became the agent of my wife, then I was her agent.

Q. Were you in that transaction acting at the request of your wife?

A. Oh, no; she didn't make any request upon me.

Q. Then the statement in the bill of complaint filed in the Superior court that it was done at her request is false, is it?

A. Well, that is a matter of opinion, I don't think either she or I intended to do or say anything that was false.

Q. It is a correct statement; is it true?

A. I suppose legally it was true—technically.

Q. You suppose it was true as matter of law, but false as matter of fact?

A. I suppose it was technically true.

Q. What do you mean by technically true?

A. The fact of the matter was I don't know the contents of that bill at the time it was made, or my wife either, although it was read to me, and I heard it read.

Q. You swore that you knew the contents, did you not?

A. I swore that I heard it read.

Q. You swore that you knew the contents to be true, did you not?

A. I suppose I did, although I don't remember what was contained in the oath you refer to.

Q. One object you had in filing or causing this bill to be filed in the Superior court was to obtain a new trustee for this trust estate, was it not?

Objected to.

A. Yes sir.

Q. Another object was, to have your action in borrowing this sum of money and improving this property ratified as action for the trust estate was it not?

Objected to.

A. I don't remember about that part of it—whether it was so or not.

Q. Have you read over, since the hour of adjournment this morning, all of this bill of complaint?

A. No, sir.

Q. This bill of complaint states that you took this action in borrowing this money as the agent of your wife, Maria L. Taylor. Is it true that you were acting as her agent?

A. I will repeat the same answer that I have already given twice to the question.

Q. Tell me what you meant when you stated in this bill of complaint, and swore, that you took this action as the agent of your wife?

A. I don't remember what I meant except that my attorneys went to work and got up that bill, and I paid very little attention to it. I was too busy at that time to give much time to legal papers, and although it of course was read to me, or I read the whole of it, still there are doubtless a good many things in that bill that I didn't pay any attention to at the time; I presume that was one of them.

Q. Your attorneys did not prepare the deposition which you signed and swore to before the master in chancery in that cause, did they?

A. They had it all their own way; there was no opposition.

Q. It was a proceeding to which there was no opposition I suppose; but you were present before the master, and gave your testimony and he took it down, isn't that so?

A. Yes, sir.

Q. Then you signed it and swore to it?

A. I suppose I did.

Q. In that testimony you say; "Under that condition of things, I as the agent of my wife, Maria L. Taylor and at her request borrowed large sums of money and erected on said premises for the benefit of said trust estate solely, using my best judgment and upon

consultation with others, a block of five marble front residences." Now will you explain what you meant by swearing in that deposition that you took this action as the agent of your wife, and at her request?

Objected to by Mr. Brown on the ground that there is not sufficient evidence that Mr. Taylor ever swore to any such thing.

A. I do not remember why that language was used in that deposition, I am sure.

Q. Do you now say that you did not do t as her agent, and that she made no such request?

A. I can only answer that question as I have already answered it two or three times, by saying that I borrowed $30,000 on my own note and offered as security a piece of property that I supposed belonged entirely to my wife. If that makes me her agent, I suppose I was her agent. I do not know any other way that I could be her agent.

Q. Did your wife have any knowledge of that transaction?

A. Not at the time it was made; No, sir.

Q. She made no such request of you then as is stated in your bill of complaint, and in your deposition?

A. I don't suppose she did.

Q. You say that you never applied to Mr. Scott, as trustee, to execute any mortgage until after these buildings were erected?

A. No, sir; I don't say that.

Q. What do you say on that point?

A. I say I never applied to Mr. Scott prior to the execution of that first note in favor of the Franklin Savings Bank of $30,000. I did apply to him about the time that I wanted to borrow some money and get $36,000. Then I applied to him.

Q. When was that?

A. I think it was a short time previous to the maturity of the $30,000 note. The $30,000 note matured the 26th day of June, 1873. I found that I was not going to be able to pay that note as I expected from my own individual funds. I found I had got to put a long loan on that property for five years. Then I went to Mr. Scott, and told him about it, and he said that he thought I had better have a new trustee appointed. For certain personal reasons he thought that he better not continue to be the trustee. It was then that he refused to sign anything.

Q. Your buildings upon this property were completed at that time, were they not?

A. I think not.

Q. Very nearly, were they not?

A. Yes.

Q. They were built in the summer of 1872, chiefly were they not?

A. No; they were commenced I think in August, 1872, the work went on until the Epizootic stopped everything. Then work was commenced again. There wasn't much work done until it was warm enough in the spring so that the mortar wouldn't freeze.

Q. The spring of 1873?

A. Yes, and they were completed during the year 1873. I don't remember how soon. The Epizootic interfered with the contractors. They couldn't perform their contracts on account of the Epizootic; at least they said so.

Q. Did you cause Howe & Russell to file another bill of complaint in the Superior court of Cook county, in reference to this matter?

A. I don't remember.

Q. How many chancery suits have you ever had?

A. I don't believe I know whether they are chancery suits or not. I have brought a good many suits; I really don't know.

Q. Did you direct Howe & Russell to bring any other suit with reference to this matter?

A. I do not remember of ever doing so.

Q. The bill of complaint in the Superior court to which I have already called your attention, it appears contains also this language; "And your orators further show unto your Honors that on the 3rd day of March, A. D. 1873, a decree of this Honorable court was entered on the chancery side thereof, restoring the title to said trust estate and establishing said trust conveyance to have been and to be the same as "Exhibit A." Your memory being refreshed by that statement, do you now recollect that prior to the filing of that bill to which I have already called your attention, you did file a bill to have the trust deed restored, because of the destruction of the records by the great fire in Chicago?

A. Yes, sir.

Q. Will you now examine the bill of complaint filed in said Superior court upon August 30, 1873, in which you and your wife are complainants, and Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, The Franklin Savings Bank and all whom it may concern are defendants, and state whether that is your signature to that bill of complaint?

A. Yes, sir; that is my signature.

Q. In this bill of complaint it is stated that upon the 13th day of June, A. D. 1871, yourself and wife executed a certain deed of trust to Ira Scott. Is the document introduced in evidence this morning as "Exhibit D," that deed of trust?

A. Yes, sir.

Q. The bill also states that this deed of trust was destroyed by fire in the great fire of October 8 and 9, 1871. Will you please explain how you reconcile that statement with your statement this morning that this has been in your possession ever since the time of the fire?

A. At the time of the fire all the papers that I had in my house of any value, were thrown into a box very early in the morning of the fire before daybreak and taken out into the country, and I never had occasion to look after that particular deed until a short time before the bill was filed in the Superior court that you spoke of. Then

I looked everywhere for it, and could not find it. On my return from Europe in the last of May or the 1st of June, 1877, I found my wife sick in bed, and unable to leave her bed, and before I went to Europe, I put all my papers in her possession, or most of them. I had occasion to get some of those papers and for the first time in my life, I went to the bottom of her trunk, and among some old letters of hers, which I stumbled on accidently at that time on that day, which I think was the 2nd or 3rd of June—the first week of June, at any rate—I found that deed.

Q. Was there any other valuable paper there except this?

A. Not any; it was in a package of letters.

Q. Who put it there?

A. The only way that I can account for its being put there was, on the morning of the fire I must have put that deed in with those old letters, when I grabbed up everything in the way of papers and put them all in a box together.

Q. Prior to swearing that this deed was destroyed by fire. Had you made any inquiry of your wife about it?

A. I had, and had searched everywhere where I supposed there was the slightest chance of any valuable paper being kept.

Q. Where were you accustomed to keep this deed before the fire?

A. I think that that deed was made in June, previous to the fire. I went East and returned only one week before the fire, and while I was gone East those papers were in my house. I went East with my family.

Q. What do you mean by those papers?

A. All the valuable papers that I had at that time, except what I used down town in my business.

Q. Do you know that this deed was in your house before the fire?

A. It must have been.

Q. Have you recollection of it?

A. Yes, and what made me when I found it think that it must have been there was, because in talking it over with Mr. Scott, who was the trustee, I reminded him of an occasion just before I went East, of going to his house—which was the next door to mine right across the street, and reading that deed over with him, and as I thought left it in his possession, and when I went East I thought it was in his possession, and always thought it was so, and that it burned among his papers, as all his papers were burned. I always thought it was destroyed in his possession until I found it.

Q. Then you have no recollection of its being in your possession before the fire?

A. No.

Q. You have no recollection of its being in your possession at any time until you found it in this package of letters in your wife's trunk?

A. That is so.

Q. And you asked your wife about it, you say, and you could get no information from her?

A. Not any; she could not remember anything about it?

Q. Did you inquire of Mr. Scott about it?

A. I did.

Q. By what means were you enabled to swear in this bill of complaint filed in the Superior court on the 30th of January, 1873, that exhibit attached to that bill was a copy of the trust deed that you then said was destroyed by fire?

A. For this reason, Mr. Russell, of Howe & Russell, who drew the original deed, and Mr. Hall who was in his office who engrossed it—did the writing—knew a good deal more about the contents of that deed than I did, and I went to Mr. Russell and told him that I wanted a copy of that deed drawn as near as he and Mr. Hall could possibly remember it. After consulting Mr. Scott, and Mr. Russell consulted Mr. Scott several times and Mr. Hall, and the deed was practically got up between them. I could not remember much about it, except the idea as I supposed the property was conveyed to a trustee for the benefit of my wife and children. I could not remember anything positive about it.

Q. You never found this trust deed until after these foreclosure proceeding were commenced, did you?

A. No, sir; not until long after.

Q. After all efforts on your part to settle the matter with the complainant had failed?

A. Yes, sir. Well, I ought to correct that answer because Mr. Newell was on here recently trying to make some settlement with me.

Q. How recently?

A. Some time during 1877—the summer I think of 1877. I think it was the summer of 1877, when he was out here—summer or fall, I would say.

Q. On the 1st of January, 1874, yourself and wife with Mulliken, as trustee, executed a trust deed for the use of the complainant in this cause to secure the sum of $2,875—do you mean to say that you did not receive that sum of money?

A. To the best of my recollection that was for money that I owed them.

Q. What did you owe it to them for?

A. As I stated before, I think it was for interest money that was due on a loan made to the Riverside Improvement Company.

Q. How did that create any indebtedness from you to this complainant?

A. Well, they were out here and we had a long talk. Two of them were out here—two of the directors—about the Riverside Improvement loan about foreclosing the mortgage and getting the property and trading it off and getting it into something that they would rather have than lots in Riverside, and it was understood between us that if I could trade those lots for anything, and make any kind of a trade that was satisfactory to them, I should have what equity there was in it, if there was any, myself, if they could only get their money, and if I would pay that interest or secure it in any way.

Q. This was interest that had been paid to you, was it not?

A. Not as I recollect it.

Q. It was money that had been paid to you, and you had failed to remit, wasn't it?

A. Not that I remember.

Q. Is your recollection clear on that point?

A. It never was paid to me, because the Riverside Improvement Company never paid any interest on their loans of course. The Riverside Improvement Company never paid any interest on their loans after the first six months, is my recollection—on any loans.

Q. Confine yourself to this $2,875. I would like to have you explain what that was for?

A. I have said all that I can remember about it.

Q. That is all you can remember, is it?

A. Yes, sir.

Q. Isn't it a fact that that was money belonging to the bank which had been paid into your hands, and which you had failed to remit?

A. I do not remember anything of that kind.

Q. You do not mean to be understood by your answer in your direct examination that you never received any consideration for this $2,875 note.

A. No, I do not.

Adjourned by consent to Monday, March 4, 1878, at 2 o'clock P.M.

FRANK C. TAYLOR.

Subscribed and sworn to before me this 8th day of April, A. D. 1878.

H. W. BISHOP,

*Master in chancery of the Circuit court of the United States, for the Northern District of Illinois.*

WEDNESDAY, March 6, 1878.

Parties met pursuant to adjournment.

Present: Mr. BROWN, solicitor for guardian, *ad litem*, and Mr. SWIFT, of Grant & Swift, solicitor for complainant.

The cross-examination of Frank C. Taylor was resumed by Mr. Swift, as follows:

Q. I understand you, Mr. Taylor, that you now say that in the erection of these buildings upon this land, you were not acting at the request of your wife; she made no request of you?

A. Not that I am aware of.

Q. How much did she know about what was going on?

A. She knew that the buildings were being erected.

Q. She knew that money was borrowed for that purpose, did she not?

A. Yes, sir.

Q. And before anything of the kind was done you talked it over with her, didn't you?

A. Yes, sir.

Q. In fact the whole enterprise was planned between you two, wasn't it?

A. Well, no; it was not.

Q. It was your own plan, was it?

A. Yes, sir.

Q. But submitted to her and talked over with her?

A. Well, only as to the internal arrangements of one of the houses.

Q. Was that the house in which you were to live?

A. Yes, sir.

Q. Still she knew that the buildings were being erected?

A. Yes, sir.

Q. And that the money was borrowed for the purpose of erecting them?

A. Yes, sir.

Q. What were circumstances immediately after the great fire of October, 1871?

A. Well, I had a very good income.

Q. From what?

A. Well, from lending money and negotiating loans and trades —various kinds—real estate, and I had a salary from a bank I was connected with.

Q. Were you able to support your family and children?
A. Yes, sir.
Q. From your income?
A. Yes, sir.
Q. Aside from anything from this property?
A. Yes, sir.
Q. Then the improvement of this property by erecting these buildings were not necessitated by anything in your own financial condition at that time?
A. Well, it was all the property the children had, and I might die at any time, and I had to provide for them. I thought the property ought to be improved so they would have something in case I was taken away.
Q. In your deposition attached to the master's report filed in the Superior court of Cook county, upon the 19th of August, 1873, in the suit brought by you and your wife against Ira Scott, *et al.*, occurs this testimony that you have signed and sworn to: "Both Mrs. Taylor and myself were losers by the fire in other ways than in the destruction of the property in question. Our losses by the fire were so great that we could not suitably provide for our necessary wants and those of our children, and pay the taxes on said premises without in some way getting the premises in some way to bring in a revenue;" and again in the same deposition you said: "We were not without the benefit of this property, in condition to be enabled to suitably support and provide for our family." Is that testimony of yours given at that time true or not?
A. Well, it depends upon what we call suitably supporting the family.
Q. I suppose you can answer the question whether that testimony given by you at that time was true or not?
A. Immediately after the fire, that was true.
Q. Then it was necessary to improve this property and get an income from it in order to suitably support these children who were interested in this trust estate, was it not?
A. Yes, sir.
Q. You say that the children had no other property?
A. No.
Q. Did the children have any guardian?
A. Not that I remember of.
Q. Well, you know whether any guardian of the children has ever been appointed or whether you and your wife alone.
A. At what time? They have a guardian now.
Q. Who is their guardian now?
A. Mr. Peckham.
Q. He is their guardian *ad litem* in this suit, that is all, isn't it?
A. Yes, sir; that is the only guardian they ever had. There was a guardian in the other suit.
Q. Your children have always lived with you as a part of your family, have they not?

A. Yes, sir.
Q. And your wife also?
A. Yes, sir.
Q. You and your wife never keep any separate account with the children as to their board and expenses, do you?
A. No.
Q. Nor have you as the agent of your wife in the management of this property or in the time that you have spent in the improvement of this property or in connection with it, received any pay for your services in any way, have you?
A. I never received any pay for any services.
Q. Prior to the time that the present buildings were erected this property I understand it was occupied by you as a homestead?
A. Yes, sir.
Q. No income was received from this property?
A. No.
Q. You and your wife paid no rent in any way?
A. No, sir.
Q. After these five dwellings were erected on this land, what use was made of them?
A. Well, we occupied one and one was sold and the other three rented.
Q. Which one did you occupy, the corner one?
A. The corner one.
Q. One was sold. Was it rented at any time before it was sold?
A. No.
Q. To whom was it sold?
A. My brother.
Q. And the other three were rented?
A. Yes, sir.
Q. Who rented them?
A. Mulliken, trustee.
Q. What is his full name?
A. Charles H.
Q. Who was Charles H. Mulliken?
A. Do you mean what was his business?
Q. He was a clerk in your office was he not?
A. No, sir.
Q. What was his business when he was appointed trustee in this cause?
A. He was cashier of the Cook County Savings Bank.
Q. What had been his business?
A. Well, in the main he was in the grocery and provision business.
Q. In your employ?
A. No, sir.
Q. Hadn't he been in your employ at any time?
A. Never.
Q. Wasn't he connected with you in business in any way?

A. Never, except I was a stockholder in the bank that he was the cashier of.

Q. And vice-president, were you of that bank?

A. Yes, sir.

Q. That was the Fourth National?

A. No, sir; the Cook County Savings.

Q. That is the bank you were vice-president of?

A. Yes, sir.

Q. Were you yourself a banker at any time?

A. No, sir.

Q. Not at any time?

A. No; only as an officer in a bank, unless an officer in a bank is called a banker. They are frequently called bankers.

Q. Well, when you were vice-president of the bank, did you have any other business?

A. Yes, sir.

Q. What other business?

A. Real estate and loans.

Q. Upon the 6th of March, 1873, it seems that you deposed before Benjamin D. Magruder, as appears from the deposition filed in the Superior court, in connection with the masters report upon the 29th of March, 1873; "I am a banker," what did you mean by that?

A. That I was an officer in a bank.

Q. You alluded, did you, to the fact of your being vice-president of this Cook County Savings Bank?

A. Yes, sir.

Q. And Mulliken at that time was cashier?

A. Yes; sir.

Q. And at the time that he was appointed trustee by the Superior court of Cook county as successor of Ira Scott and Benjamin F. Peabody, he was the cashier of that bank and you were the vice-president?

A. Yes, sir.

Q. Now you say that Mulliken has rented this property, who has attended to the renting of it?

A. I attended to it at that time more than any one.

Q. You collected the rents, did not you?

A. Yes, sir.

Q. You used the rents, didn't you?

A. I used some of them.

Q. Well, you and your wife used them all, didn't you?

A. No.

Q. What did you do with the balance that you didn't use?

A. We paid the interest and insurance and taxes on the property.

Q. So that, outside of what was used to pay the interest, insurance and taxes upon the property, was used by yourself as your own means, was it not?

A. Yes, sir; for my family.

Q. Well, you never made any distinction between that fund that you collected from rents and the income that you received from other sources, in using it in support of your family, did you, Mr. Taylor?

A. Oh, I never kept any separate account.

Q. You never kept the fund distinct, did you?

A. No.

Q. I understand that your family has always lived together ever since this trust was created and that you have cared for them and supported them and that what income there has been from this trust estate has been used by you just the same as any other income that you have received as going towards that support?

A. Yes, sir.

Q. The premises described in the bill of complaint filed in the Superior court of Cook county, January 13, 1873, by yourself and wife against Ira Scott *et al.*, for the purpose of restoring the terms of this trust and establishing the title, are the same as those covered by the mortgages for the use of the complainant described in this bill of complaint, are they not?

A. Yes, sir.

Q. And the same as those described in the second bill by yourself and wife against Ira Scott *et al.*, filed in the Superior court of Cook county, Illinois, upon the 23d of July, 1873, for the purpose of appointing a new trustee and for other purposes.

A. Yes, sir.

Q. In the hearing of the first mentioned bill in the Superior court of Cook county, Illinois; that is, the bill filed January 30, 1873, you introduced in evidence an abstract of title of these premises, did you not?

A. I don't remember.

Q. Well, will you look at the abstract of title I now hand you and state whether that is the abstract of title of these premises?

A. Yes, sir; an abstract of title down to November 15, 1873.

Q. Well, in your deposition given in that cause, you say: "the abstract now introduced before the master was made by Shortall & Hoard, June 20, 1872, in the regular course of their business. It was made upon my order and delivered to me when made. Now will you examine that abstract that you hold in your hand and state how much of it, if any part, was the abstract to which you refer in this deposition and which was introduced in evidence in that cause?

A. I presume it is the same one. I have no reason to believe it is any different.

Q. All of this abstract made prior to and including the last continuation by Shortall & Hoard, dated June 20, 1872, shows only this with reference to the deed of trust made by Maria L. Taylor and husband to Ira Scott, dated June 13, 1871, and recorded June 15, 1871, in book 673, page 1, consideration $1.00; conveying lot 4, in block 16, in Bushnell's addition to Chicago, referring to book 165 of maps, page 51. In your deposition given in the cause commenced by yourself and wife in the Superior court of Cook county, upon the 23d day

of July, 1873, you say: "All the abstracts, minutes and copies and extracts of and concerning said trust conveyance which were preserved from the said fire, were very slight, they only showed the trust conveyance by giving the names of myself and wife as grantors and the said Scott as grantee, as describing the property conveyed in the said deed, and the date of the conveyance and the date, book and page of the record thereof, and the only other memorandums concerning the same are that it was a deed of trust, but no reference whatever to the terms and conditions of such trust conveyance." The date concerning this trust conveyance to which you thus allude in your deposition are the data contained in this abstract of title, and which I have just read, are they not?

A. Yes, sir.

Q. Was there anything else which you knew, preserved?

A. No.

Q. Then after the fire, as I understand, you had no knowledge of the terms of the deed in trust to Isaac Scott except such as was disclosed by the index books of Shortall & Hoard, and which I have just read from the abstract made by them, and such as you gather from your own recollection, and the recollection of other parties that knew about this conveyance in trust?

A. Yes, sir.

Q. Well, that created some difficulty about your borrowing the money to improve this property, did it not Mr. Taylor?

A. No.

Q. It would have created some difficulty if you had have submitted the abstract of title to any competent lawyer, would it not?

A. I presume it would; yes, sir.

Q. In your deposition from which I have just read, you further say, after describing the premises: "My wife, the said Maria L. Taylor, joined with me, made, executed, acknowledged and delivered to Ira Scott of the city of Chicago, county of Cook and state of Illinois, and his successor and successors in trust, a certain deed of conveyance of the premises which I have just described, which deed was on the 15th day of June, 1871, recorded in the office of the recorder of deeds of said Cook county in book 173 at page 1. There is a copy of this deed attached to the bill in this cause and marked Exhibit A. By the said deed some executed by my wife and myself to Ira Scott, the premises which I have described as conveying to said Scott and his successor in trust to be held and managed by him and them in trust for the benefit of myself and wife or children and my devises and legatees. Said trust deed authorized said Scott among other things and his successor in trust to build upon and improve said premises or any part of the same for the purpose of deriving a revenue. Said Scott and his successor in trust were also authorized to borrow money for the purpose of making improvements upon said premises and were authorized to secure the payment of any money so borrowed by executing on said premises or any portion thereof mortgages or trust deeds, or to sell portions of said premises for the pur-

pose of raising funds to improve the trust estate. The Exhibit A attached to the bill in this cause, shows all the conditions and terms of the trust," where did you get all that statement of the conditions of that trust deed at the time you made that deposition?

A. I got the most of it from Russell, my attorney.

Q. The balance of it from whom?

A. Well, I remembered more or less of it; he drew the deed and one of his clerks who did the writing remembered more or less; most of it was furnished by Mr. Russell. I should have said that he drew the original deed.

Q. You also say in the same deposition: "Said premises were situated in that part of the city that had been and continued to be desirable for residence purposes, and the property being unproductive and our resources and income being cut off by the fire, Mrs. Taylor and myself decided that the best way to make the property productive would be to build a block of five first-class residences, and as all the records showing the nature of the said trust conveyance to Scott and all the copies of the same were destroyed; that said Scott when requested to borrow money to make such improvements or to execute a mortgage to secure any such loan, refused to do the same until said trust should be fully restored by the decree of some court." To what time does that refer?

A. Well, when the note which was secured by the first trust deed given to the Franklin Savings Bank matured, or about that time.

Q. Well, that was June or July, 1873, was not it?

A. Well, it was some little time before the note matured; I found that I could not pay it, and I had got to make a five years loan.

Q. Well, it was not far prior to June or July, 1873, was it?

A. I suppose not.

Q. Well, your buildings were then nearly completed, were they not? They were built in the summer of 1872 and the winter of 1872 and 1873; and at the time that this note of $30,000 was maturing, the buildings were completed, except some interior finish, were they not?

A. Yes, sir.

Q. Well, then, is not it a fact Mr. Taylor, that this which I have just read from your deposition given in this cause in the Superior court of Cook county refers to the time prior to your borrowing the $30,000?

A. Oh, no.

Q. That is not the fact?

A. Oh, no; not at all.

Q. You say that Mrs. Taylor and yourself decided that the best way to make the property productive would be to build a block of five first-class residences; I suppose that was before you commenced to build, wasn't it?

A. I don't believe I understand your question.

(Question repeated.)

A. You mean that decision we came to was made before the—

Q. Yes, sir?

A. Yes, sir; of course.

Q. You filed a bill to establish this title upon the 30th of January, 1873, in the Superior court, and obtained your decree establishing that title upon or about the 20th March, 1873. Now you say that Scott refused to do anything towards making a loan until after the trust should be fully restored by the decree of some court; on the 29th of March, 1872, that trust had been restored by some court, had it not?

A. It appears so; yes, sir.

Q. So it was prior to the 29th of March, 1873, and prior to the time that you filed a bill on the 30th January, 1873, that you had this talk with Scott, was it not?

A. I think the object in filing that bill was to restore the title, and had nothing to do with the idea of getting a new loan.

(Question repeated.)

A. I don't remember when I had the talk with Scott.

Q. Well, it must have been, if Scott objected to making the mortgage, because the records were destroyed and there was nothing to show the nature of trust, and said he would not do anything—he would not execute a mortgage or sign any paper until the terms of the trust had been restored by some court proceeding; and upon the 30th of January, 1873, you filed a bill for the purpose of restoring that trust, then your conversation with Scott and his refusal must have been prior to that time, must it not?

A. Yes, sir; I should think it must have been.

Q. You say further in your deposition from which I have just read given in the Superior court: "The delay necessary to procure such decree would have been very detrimental to the property. All the abstracts, minutes, copies and extracts of and concerning said trust conveyance which were preserved from the said fire, were very slight, they only showed the trust conveyance by giving the names of myself and wife as grantors, and the said Scott as grantee, describing the property conveyed in the said deed, and the date of the conveyance, and the date, book and page of the record thereof, and the only other memorandum concerning the same are that it was a deed of trust, and no reference whatever to the terms and conditions of such trust conveyance and the condition of the records and abstracts showing that title of said trust estate were such that it was utterly impossible for Mr. Scott, as such trustee, either to sell and convey any portion of said premises, or to borrow any money upon the same as security. Under that condition of things, I, as the agent of my wife, Maria L. Taylor, and at her request, borrowed large sums af money, and erected on said premises, for the benefit of said trust estate solely, using my best judgment, and upon consultation with others, a block of five fine marble front residences." Now, Mr. Taylor, that refers to the time when you were meditating the putting up of this block, does it not?

A. I should say that it did.

Q. All of it. So that you were mistaken in your answer to my question the other day as to the time you called upon Mr. Scott to execute a mortgage, and he refused, and it must have been prior to the time that you borrowed the $30,000, must it not; or about that time.

A. I think that can be explained in this way: That I was talking of either selling the property or improving it; but when I first talked with Mr. Scott, it was about selling.

Q. Well, you say in your deposition: "That the state of the records was such that I could not either sell or borrow money, and that he declined to sign any mortgage or any papers." So that refers to your making a loan to put up this property without selling—doing either that you could—don't it?

A. Of course, refers to that; but I don't think that at that time I contemplated making any other loan than was already on the property; I think that I was then—

Q. What loan did you refer to as being already on the property?

A. The $30,000 loan.

Q. Yes, but if Mr. Scott refused to do anything until the title had been established by some court of competent jurisdiction, then your talk with him must have been prior to January of 1873, and if after your talk with him you decided that you would borrow money to put up this property, and went on and did it as the agent of your wife, then your talk with him must have been prior to the time that you borrowed the $30,000, was not it?

A. Oh, no; I am very sure it was not.

Q. You are sure it was not?

A. Yes, sir, I am very sure that I never had any talk with him until long after the $30,000 was borrowed.

Q. When you made a loan for this complainant as its agent, what did you do with the abstract of the title that you took in connection with such loans?

A. Do you mean the $30,000 loan?

Q. No; I understand that you for a considerable time, acted as the loan agent in Chicago, of the Franklin Savings Bank, the complainant in this cause?

A. Yes, sir.

Q. When you made loans for them, I understand that you had an abstract of title to the property on which the loan was made, examined by some attorney and procured that attorney's opinion upon that title?

A. Yes, sir.

Q. Then what did you do with the abstract of title itself?

A. I kept it.

Q. You retained it yourself did you?

A. Yes, sir.

Q. For the benefit of the Franklin Savings Bank?

A. For both parties; the owner of the property being the owner of the abstract.

Q. If the man who borrowed the money paid his money then when he took his release deed, you delivered to him the abstract of title?

A. Yes, sir.

Q. But if he didn't pay his money and the property had to be foreclosed, then the abstract of title went to the bank, did it not?

A. Not necessarily.

Q. That would be the regular course of business, would it not?

A. Not always. It depends on circumstances.

Q. How long did you remain in that business?

A. Some three years.

Q. Was there any loan for the Franklin Savings Bank foreclosed during that time?

A. Yes, sir.

Q. What one?

A. The loan to the Riverside Improvement Company.

Q. You are positive that that was foreclosed during those three years?

A. Yes, sir.

Q. Did the bank have any abstract of title on that loan?

A. It had an abstract of a portion of the title. The time the loan was made an abstract from government down to date was submitted to me and to my attorneys, but I retained only an abstract to a portion of the title.

Q. That is, you retained the continuation down to date, showing the loan which you had made?

A. Yes, sir.

Q. And that you retained as part of the collateral security of the bank, did you not?

A. No.

Q. Why did you retain it then?

Objected to as irrevelant.

A. I don't remember what the circumstances were, or what the bargain was. Frequently in making loans there was different understanding in different cases as to the abstracts.

Q. Don't you know, Mr. Taylor, that it is the general practice here in Chicago, in making loans for foreign corporations, or foreign parties investing money here, that the agent shall take an abstract of title of the propety on which the loan is made, and either forward it to his principal or retain it for the benefit of his principal; sometimes retaining it in order that the party owning the equity may have access to it here in the city; don't you know that that is the general practice?

Objected to.

A. For a year or two after the fire that was not the general practice.

Q. Why not?

A. Because they could not get the abstracts.

Q. But whenever they could get the abstracts of title, was not that the practice?

The entire examination upon this subject is objected to by counsel for defendants.

A. I don't think it was general during the two years after the fire.

Q. There were cases of course in the two years after the fire when abstracts of title were very scarce, and only continuations could be obtained, but when a party borrowing money under his abstract of title and it gave only the property on which the loan was made, then was not it the custom to either take and forward the abstract or take and hold it?

Objected to.

A. I suppose in such a case as that it was the custom.

Q. Why didn't you forward the abstract of title in this case to the Franklin Savings Bank?

A. Because I didn't agree to.

Q. Did you retain it as their agent for their benefit?

Objected to.

A. No; nothing was said on the subject one way or the other.

Q. No; nothing was said on the subject; but why did you in this case vary from the general and best practice, with reference to loans?

A. Because I considered it perfectly safe in my hands.

Q. That is you considered you were acting as the agent of the bank and that you held it for their benefit and your benefit?

A. Well, I don't believe I considered anything about it that time.

Q. But you were the agent of the bank?

A. Well, that question was raised once by this very bank and they said I never was their agent; I don't know whether I was their agent or not.

Q. I ask you what you say about it?

A. Well, I don't really know whether I was their agent or not.

Q. You don't know you were making other loans for them at the time?

A. I was, and I was the only party at that time that was making loans, I will say that, to my knowledge.

Q. I will ask you again if it is not a fact that you learned from Ira Scott that he would not join in any mortgage upon this property because of the state of the title and you knew that the title would not be passed by any competent attorney and papers approved by such attorney, and consequently you and your wife executed a trust deed to Brown and sent it on to this bank for $30,000, without any abstract of title and without any attorneys opinion on the title?

A. No; that is not the fact at all.

Q. It is a fact that you didn't submit the title to anybody for examination in connection with that loan of $30,000?

A. That is a fact.

Q. It is a fact that you didn't send the abstract of title to the bank?

A. That is a fact.

Q. These five buildings that you built upon these premises cost over $50,000, didn't they?

A. They did, if they had all been paid for. The contracts amounted to that.

Q. Well, they cost that, didn't they?

A. The contracts were for upwards of $50,000, but some of the money never was paid.

Q. In your deposition given in the Superior Court of Cook county, in a bill brought by yourself and wife against Ira Scott, *et al.*, on the 23d of July, 1873, you say: "The buildings and improvements on said premises have cost and we have paid and expended on the same, the sum of $53,000, and we hold the proper vouchers for the same." What do you mean by that testimony?

A. Well then, the amounts that were unpaid must have been over and above that.

Q. What do you mean by that testimony?

A. I suppose I meant what I said.

Q. Then it is a fact, is it not, that those improvements cost more than $50,000.

A. Yes, sir.

Q. And of that sum $36,000 including the interest as stated in your examination the other day, was received from the Franklin Savings Bank, was it not?

A. Well, I can only say what I said the other day—I don't know whether that money that I received from the Franklin Savings Bank, went into these buildings or not, all of it.

Q. Well, I understand from what you said the other day that you could not keep the identical money separate, but of this $36,000, if you took any of it for any other purpose, you restored it by an equivalent received from some other sources, isn't that it.

A. I was receiving and paying out money from a good many different parties; and I paid out money into these buildings.

Q. More than $50,000?

A. Yes, sir.

Q. And $36,000 including the interest as stated in your examination did come from the Franklin Savings Bank, did it not?

A. That $36,000 was secured by that trust deed or four trust deeds, four notes of $9,000 each, secured by four trust deeds, took up my old note of $30,000. I only received from them under those deeds about $3,000.

Q. Well, you received from them about $3,000 and the cancellation of accrued interest on the $30,000 note and the $30,000 note itself; making in all $36,000, did you not?

A. Yes, sir.

Q. And that amount of money was with other moneys put into these buildings, was it not?

A. That amount of money certainly was.

Q. With other moneys from other sources?

A. Yes, sir.

Q. And the only reason that you can not swear that that identical money went into the buildings is that the moneys received on this loan, and from other sources, were not kept separate and distinct by you, and you were paying out money for other purposes as well as for these building, is that it?

A. That is not the only reason.

Q. Well, what other reason?

A. The fact that at the time I received that money—that $30,000 from the Franklin Savings Bank, the contracts were not due and I know I didn't pay that money to the contractors at that time, the work had not been completed enough for it.

Q. You made application to the bank for an advance of $30,000, did you not?

A. Yes, sir.

Q. And you made application for this to be paid over to you as you should need it as these buildings progressed, did you not?

A. That I think was the wording of the application, or in substance.

Q. And it was paid over to you in instalments, was it not?

A. It was.

Q. And you commenced building about in August of 1872, did you not.

A. Yes, sir.

Q. And on July 8, 1872, you received $10,000, and on October 15th, $10,000; November 1st, $5,000, and December 13th, $5,000. That is to say, you received the money as stated in the letter already introduced in evidence marked "Exhibit C."

A. Yes, sir.

Q. And your family have continued to live in one of these houses up to that time?

A. We lived in one of those houses about two years.

Q. Well, did you go into it as soon as it was completed?

A. Yes, sir.

Q. And when did the two years expire?

A. We remained in it, I think, a year, and then went out to Lake View and remained there a year.

Q. What was done with it during that year of your absence?

A. Rented.

Q. Rented furnished?

A. Yes, sir.

Q. By you?

A. The house was rented by Mulliken, trustee.

Q. Well, it was rented in the name of Mulliken, trustee, but who attended to it?

A. I did.

Q. Who collected the rents?

A. I did.

Q. Who used them?

A. Well, I used them the same as I did all the rents.

Q. Well, then you came back from Lake View and lived in it another year, did you?

A. Yes, sir.

Q. What was done with it after that?

A. Rented.

Q. By whom?

A. For a short time by Mulliken, and then afterwards by Mr. Harvey.

Q. Well, for how long a time was it rented by Mulliken.

A. Up to May, 1877.

Q. And when was it rented?

A. May, 1876, I think, or June, 1876—no July, 1876.

Q. And the rent was collected in advance up to May, 1877, was it not?

A. Yes, sir.

Q. By whom?

A. I collected it the same as I did all the rents.

Q. Used it as before?

A. Yes, sir.

Q. And since this block has been completed and up to the time that it went into the hands of the receiver of this cause, you, in the name of Mulliken as trustee, have received all the rents that have been received from that block, have you not?

A. Except one house that I sold to my brother.

Q. There hasn't been any rent received from that, has there?

A. No.

Q. And these rents you have used as a part of your regular income, have you not?

A. Yes, sir.

Q. You say you used them part for the payment of taxes, interest and insurance upon this property?

A. Yes, sir.

Q. But you say you have kept no separate account of this money?

A. No.

Q. The rents you received you pooled with the rest of your income, have you not?

A. Yes, sir.

Q. And from that income as a whole you have paid what interest, taxes and insurance has been paid upon this property?

A. Yes, sir.

Q. How much was that house sold for?

A. Well, I never received a dollar for it. It was sold for Sam Walker's paper; it was not worth the paper it was written on.

Q. Well, how much did it sell for?

A. It sold for $15,000 of Sam Walker's paper.

Q. Well, who received that paper.

A. I did.

Q. What did you do with it?

A. I received it for the trust estate and held it for the trust estate.

Q. What did you do with it?
A. Well, the trust has got it yet.
Q. All of it?
A. Well, I think one of the notes was exchanged for another note; got the most of it.
Q. You say the trust estate holds it; in whose possession are those notes?
Objected to.
A. Well, is it necessary for me to answer all these questions?
Q. Yes, you can answer just the same.
A. I would rather not answer any questions about my brother's business, if I can help it.
Mr. BROWN: You are obliged to answer, I suppose, all questions that are asked.
A. Well, I don't know where these notes are.
Mr. SWIFT: Where were they when you last saw them?
Objected to.
Mr. BROWN: I don't want to mislead you. Of course if you refuse to answer any question, the only remedy Mr. Swift would have, would be to apply to the court, I suppose, and then the question would be passed upon; but then the master, as I understand it, has no right to pass upon it.
A. Well, the last time I saw them they were in the hands of an attorney.
Q. What attorney?
Objected to.
A. No, I must change that answer. The last time I saw them they were in the hands of my younger brother.
Q. How came they in his hands?
Objected to.
A. Well, I had some hopes of trying to get the house back and delivering the paper back.
Q. Who was your younger brother, the one that bought this house?
A. Well, at that time I had another brother here. My idea was to have all the papers put into some third party's hands that we could both trust and then have all the questions connected with it submitted to another party.
Q. Well, you put them into your younger brother's hands?
A. Yes, sir.
Q. You have dealt with these Walker notes—
A. Yes, sir.
Q. —From the time that they were received as if they were your own property, have you not?
A. No; not as if they were my own property, but I had charge of them.
Q. And anything that has been done in connection with them you have done, haven't you?
A. Yes, sir.

Q. But you say you don't know where they now are?
A. No; I do not.
Q. Well, have you sold them, or disposed of them or thrown them away as worthless?
A. I exchanged one of them for another note, which I have got yet, or that is, I suppose they are all together.
Mr. Brown objects to all these questions as irrelevant and incompetent testimony and impertinent to this issue.
Q. That is, you suppose this new note that you have taken is with the others?
A. Yes, sir.
Q. And where they are, you don't know?
A. No.
Q. At the time that these improvements were made, Mr. Taylor, they were judicious improvements for the benefit of this trust estate, were they not?
A. I thought so.
Q. In order to get any income from that property it was necessary to improve it in some way so that it could be rented as residence property, was it not?
A. It was certainly necessary to improve it in some way in order to get an income from it, unless we sold it.
Q. At the time it was your judgment and the judgment of others, that the best way was to improve it as residence property?
A. Yes, sir; I think it was.
Q. The improvements were worth, at that time in your judgment, what they cost, were they not?
A. No; because one of the contractors failed to do what he agreed, which was to take a large amount of real estate in pay for his work, and he failed to do it, so I had to use money, and if I had known I had got to use so much money I would not have started the buildings at all.
Q. But the improvements were worth substantially what they cost, were they not?
A. I never have thought they were. The epizootic made a great difference in the value of these buildings.
Q. In the cause in the Superior court in which the master's report was filed on the 19th of August, 1873, and in which the bill was filed on the 23d of July, 1873, in which you and your wife were complainants against Ira Scott, *et al.*, defendants, when Frederick Baumann was a witness and gave a deposition before the master in chancery in the cause, who procured him to attend there as a witness?
Objected to.
A. I don't remember, I am sure.
Q. Well, you did, did you not?
A. I don't remember.
Q. Well, what do you think about it?
A. I don't remember whether I obtained all the witnesses or not.

Q. Well, you either procured Mr. Baumann's attendance there as a witness, directly or indirectly, did you not?

A. Well, my attorneys had charge of that matter entirely. I really do not remember who obtained the witnesses.

Q. I suppose you told them who was your architect in that matter, did you not'

A. Oh, certainly.

Q. And Mr. Baumann was your architect, was he not?

A. Yes, sir.

Q. Were you present at the time that he testified in that cause?

A. I think not.

Q. Did you ever read over his deposition in that cause?

A. I don't remember; I presume I did.

Q. In the deposition given in that cause, you say: "It," alluding to the making of these improvements, you say: "I have devoted a great deal of time to the superintendence of the improvements, and they are actually worth to the trust estate all of the money that we have paid out and expended for the same." And you have previously testified that you had paid and expended for the same over $53,000 for which you had the vouchers. Now what do you say as to these buildings being worth at that time in your judgment at least that amount of money?

A. I suppose when I said so, I thought so.

Q. That is what I am asking you for—your judgment at that time? You also say in your deposition: "It has been done under the instructions and direction of my wife and myself, and with her entire approval," was that true?

A. I suppose it was.

Q. And you say she gave you no directions about the matter at all.

A. No.

Q. Made no request of you?

A. Only so far as the internal arrangements of one of the houses was concerned.

*Re-direct Examination by Mr. Brown.*

Q. Mr. Taylor, I will ask you whether at the time those houses were built—materials and labor—such materials and labor as were used in the building of these houses and such labor as was used in building then—were higher or lower priced than shortly before that time?

A. Higher.

Q. Were they higher or lower than they have been since that time?

A. Higher.

Q. Then I understood you, that at the time those houses were built that was the most expensive time for making such improvements.

A. That was.

Q. I will ask you, Mr. Taylor, what the fact has been in relation to the income derived from those houses. You spoke of using the income over the amount paid for taxes, insurance and interest on this loan partly for the support of yourself and family. How long were you in receipt of any income which amounted to over the amount of taxes, interest and insurance on these buildings?

A. Well, including the repairs?

Q. Yes, including the repairs.

A. I never received but very little more than I paid out.

Q. How much do you suppose?

A. Well, probably $500 a year.

Q. For how long?

A. Until I think it was August, 1876, which would make a period of a little over three years—about three years and a half.

Q. Do you know, Mr. Taylor, what those houses are renting for at present?

A. Well, I was told by the tenants; I don't know of my own knowledge.

Q. Do you know whether the income derived from that property at present pays the interest, taxes and insurance and repair?

A. I am very sure it does not.

Q. By a considerable?

A. By a considerable.

Q. I will ask you whether you are acquainted with the values of real estate in the city of Chicago?

A. I am.

Q. In connection with your business—that which has been your business for years past?

A. Yes, sir.

Q. I will ask you what in your opinion would be the value now of the real estate upon which these buildings stand, without the buildings and unincumbered, what would be the marketable value?

A. Not including the house sold?

Q. Not including any houses—anything on the property at all?

A. You mean eighty-four feet?

Q. I forgot how many feet there are. If there had never been any buildings made on it?

A. One was sold to George, my brother; that would leave eighty-four feet on Dearborn street.

Q. Well, with that exception?

A. Well, the eighty-four feet front on Dearborn street, I should say was worth $15,000.

Q. I will ask you, Mr. Taylor, what you would consider the value of that property, over and above the present alleged encumbrance upon the same sought to be foreclosed in this court, including the real estate and land?

A. I think it is worth less than the encumbrance.

Q. You think the property with the houses is worth less than the encumbrance set up by the Franklin Savings Bank?

A. Yes, sir.

Q. What is your opinion as to what it would sell for at the foreclosure sale if a foreclosure sale was ordered?

A. Well, I think to-day those four houses and four lots would sell for cash for $35,000.

Q. I will ask you then whether it has been a benefit or misfortune to that estate, supposing that estate to belong to your children, to have that block of five buildings erected thereupon, and the property subjected to this encumbrance?

A. I think it has been a very great misfortune.

Q. Again, I understood when you say that you considered it a judicious improvement, at the time it was made, you were mistaken?

A. I was very much mistaken.

Q. What do you think now the land and houses erected thereupon were worth at the time of their completion, cash?

A. The four houses and four lots, $50,000.

Q. Then they were not at that time, in your opinion now, worth that amount of money, which you say you paid for the improvements?

A. The amount of money set forth in my deposition there, covered the five houses. This suit is only on four houses, as I understand it.

Q. Well, I will ask you, Mr. Taylor, when you said in your deposition that it was necessary to suitably support your children, to have that property improved and an income received therefrom, what definition you placed upon the word "suitably?"

A. Well, living as we always had lived, and give them a good education.

Q. Well, had you lived very generously?

A. We had.

Q. Well, was it absolutely necessary for the support of these children and for the education of these children at that time, that an income should be derived from that property and an encumbrance placed upon it for the purpose of producing that income?

A. It was not then, as long as I lived.

Q. Well, Mr. Taylor, you were aware, were you not, at the time that this encumbrance was placed upon the property that if such an encumbrance bound the interest of the children it was taking great risk as to the value of their estate in the same.

A. Which encumbrance, the $30,000 or $36,000?

Q. The $36,000 which is sought to be foreclosed?

A. Yes, sir; I must have been aware of it.

Q. Now, I will ask you whether that property before it was built upon at all could not have been sold for cash?

A. It could.

Q. What was the marketable value of it in your opinion at that time before it was built upon, in the spring of 1872?

A. Well, as a corner lot, and the best corner of the street to sell, the whole 104 feet to one party, I think it was then worth $30,000.

Q. Was there any encumbrance of any kind upon it before you began to build?

A. Not any.

Q. Were you aware of the true contents of the trust deed which has been put in evidence here as "Exhibit D," in the spring of 1872?

A. I was not.

Q. You swore in March, 1873, that a paper marked "Exhibit A" and filed in a suit begun by you in that month against Ira Scott and your children, and others, was a copy of the deed, was that copy which you swore was a copy, in fact a copy of this deed which has been produced in evidence?

A. No; it was not.

Q. Then you were aware in the spring of 1872, and from that time onward until this deed was re-discovered, as spoken of in your direct examination, or the real interest of the infant defendants in this suit; in the land and premises, which are subject of litigation?

A. No; I was not.

Q. Were you when you made that trust deed to Edward Brown in the spring of 1872, by which you and your wife purported to convey the title to Edward Brown, aware that your children had any more vested interest in it or any more substantial interest in that land than they would have were the deed as restored by the decree of the Superior court, the actual deed from yourself and wife to Ira Scott?

A. No, I was not.

Q. Were you aware of it when you joined with Mr. Mulliken and your wife in the execution of the trust deeds to Francis S. Howe, which are the subject of litigation in this suit?

A. I was not.

Q. Or in the subsequent trust deed, for $2,875, mentioned in this suit?

A. No, I was not,

Q. I will ask you Mr. Taylor, for how much at this time, if you are acquainted with such matters, the five buildings standing on Dearborn street, on the premises which are the subject of litigation, could be erected?

A. Well, $35,000; oh, no; $35,000, or less.

Q. When you stated in your cross examination when you made the trust deed to secure $30,000 to Edward Brown, you thought that the property belonged entirely to your wife, I will ask you whether it has or has not been your custom, since your marriage to act practically as your wife's agent in business affairs?

A. Well, I don't know exactly how to answer that question, I am sure.

Q. You must know whether your wife has taken an active interest or whether you have acted for her?

A. Well, I have generally done about as I pleased.

Q. Now, I will ask you whether at the time you made the thirty-six—the four deeds securing the $36,000 and the deed to secure $2,875—you still thought that the effect of the deed made by yourself and wife to Ira Scott, was to make your wife in connection with yourself the real owner of that property?

Objected to.

A. Yes, sir.

Q. Do you mean by that that she was really the beneficial owner, the equitable owner?

Objected to.

A. I suppose she was.

Q. Mr. Taylor, who suggested the name of Charles H. Mulliken for trustee for these children?

A. Mr. Scott.

Q. I will ask you whether or not as a matter of fact the conduct of these suits in the Superior court of Cook county, was entrusted to your attorneys to direct the proceedings?

A. I did.

Q. And I will ask you whether your object was or was not to give a satisfactory title to the Franklin Savings Bank?

Objected to.

A. Yes, sir; it was.

Q. Your object was to give a satisfactory title to the Franklin Savings Bank for the amount of money received from them?

Objected to.

A. Yes, sir.

Q. I will ask you whether or not the Franklin Savings Bank through its officials or otherwise made objections to the character of the title received by the deed from yourself and wife to Edward Brown, for their benefit and desired the conveyance from the trustee of that property to secure their loan?

A. No; they never said anything about it.

Q. They never—then the proceedings which resulted in the conveyance or pretended conveyance from the trustee to Francis Howe of the title to that property, was voluntary upon your part?

A. Entirely, as to the $36,000, but not as to the $2,875.

Q. Were they aware of the fact that there was a title to that property outstanding in the hands of the trustee, between the trust deed for $30,000, and the making of the four trust deeds for $36,000?

A. They were aware of it at the time the $30,000 was borrowed.

Q. Were they aware of it before the four deeds securing the $36,000 were made?

A. I think not, inasmuch as the paper was to be changed by adding the name of the trustee. The title to the property was to be re-

stored and a new trustee appointed. I might have said something to the bank about the new trustee being appointed, but I don't remember of anything being said at all on the subject between the bank and myself, prior to the making of the loan of $36,000.

Q. The Franklin Savings Bank was made a party, was it not Mr. Taylor, to the suit began by you to restore that trust deed from yourself and wife to Ira Scott?

A. I don't remember.

Q. I will ask you whether or not any part of this $53,000 which you testified to in this deposition referred to by counsel, was in anything but cash?

Objected to by Mr. Jayne.

A. I had a contract with the masons to take some real estate, and whether that was included in that estimate or not, I dont't remember.

Q. The deposition states Mr. Taylor, that they had expended $53,000 for which they held vouchers for receipts. I want to know whether that is entirely cash—supposed by you to refer entirely to cash, or whether there was anything else?

A. I suppose that that referred to so much cash or its equivalent

Q. May it have been an equivalent for cash?

A. It may have been; yes, sir.

Q. Who is Edward Brown, trustee, mentioned in the $30,000 trust deed?

A. He is a gentleman that resides in Salem, Massachusetts.

Q. Where was he residing at this time?

A. In Chicago.

Q. Did he know anything about this trust deed made to him at the time it was made?

Objected to.

A. I don't remember whether he did.

Q. Isn't it a fact that his name was used as the name of a trustworthy person might be, as trustee for an encumbrance, the circumstances of which he knew nothing about?

Objected to.

A. That was the case; yes, sir.

Q. He had no knowledge of the circumstances in relation to this loan, or of the character of the title, or the dealings between yourself and the Franklin Savings Bank?

Objected to by Mr. Swift.

A. Not any at all.

Q. Isn't the explanation of a good many of your actions which have been inquired about in this cross examination, your belief that your wife would be perfectly willing to ratify anything that you thought best to do?

A. Yes, sir, that is the effect of the matter.

Q. That is the real explanation of a great many of your actions?

A. Yes, sir.

Q. I would like to ask you a question which I think Mr. Swift asked you, and the answer to which I don't remember. Didn't Mr. Scott at some time deny that it was in his power to encumber that property, or that he feared that it was not in his power after a request made by you as to encumber it.

Objected to.

A. I don't think that he even said that prior to the creation of the four mortgages of $9,000 each.

Q. At that time or shortly proceeding that time, you say, you did ask him to make a trust deed on those premises?

A. Yes, sir.

Q. What excuse did he then give for declining to accede to your request?

A. He said that at the time he accepted the original trust he supposed that we were going always to use that property for a homestead, that there never would be any changes in it of any kind and consequently he was willing to accept the trust, but situated as he was in relation to other parties and having personal reasons, he thought if the property was going to be encumbered by a five year mortgage, and perhaps some of it sold, that he had better resign, and a new trustee had better be appointed.

Q. And he named Mr. Mulliken?

A. He did.

Q. Was it not a fact that Mr. Mulliken at that time was very closely connected with you in business?

A. Yes, sir; he was cashier in the institution that I was vice-president of.

Q. Did you have the general direction or control of matters in the institution of which he was cashier?

A. I did when he was my cashier.

Q. Did you not at the time he was made trustee?

A. I did.

Q. He was then in the habit of doing about as you said, was he not?

A. Yes, sir.

*Cross Examination by Mr. Jayne.*

Q. You testified, did you not, on Saturday last that you undertook the direction of the building on the premises in question in fall of 1872?

A. Yes, sir.

Q. That is true?

A. Yes, sir. I think excavation commenced in August.

Q. Did you advertise for bids for this work?
A. No, sir.
Q. Let by private contract?
A. Yes, sir.
Q. Who did the contracting with the workmen, or negotiating with them.
A. Well, I did it with some and Mr. Baumann did it with others.
Q. Was it all done under your instructions and directions?
A. Most of it; yes, sir.
Q. Wasn't it all in the first instance?
A. I think not.
Q. What portion was not, if any?
A. Well, I think the smaller contracts I had very little to do with, such as plumbing, etc.
Q. Who had charge of those?
A. Mr. Baumann.
Q. Who employed Mr. Baumann?
A. I did.
Q. Then primarily you did have the oversight of the whole work?
A. Represented by Mr. Baumann; yes, sir.
Q. He was acting under you—your instructions?
A. Yes, sir.
Q. As employed by you?
A. Yes, sir.
Q. With whom did you contract with the cut stone and mason work for these buildings including the plastering.
A. Grant & Price.
Q. Were they principal contractors?
A. Yes, sir.
Q. Were the contracts in writing?
A. Yes, sir.
Q. You may look at this contract Mr. Taylor, dated the 27th day of August, 1872, between J. Price & Co., of Chicago and Frank C. Taylor, Esq., of the same place, for the mason work in the construction and completion of a block of five dwelling houses located on North Dearborn, southeast corner of Maple, and also the supplemental contract on the back of the contract, and see if the signatures there—to as party of the second part, are your signatures?
A. Yes, sir; that is my signature on this piece of paper.
Q. There are two signatures there, are there not, on that piece of paper?
A. Yes, sir.
Q. Both yours?
A. There are four signatures. Two are mine and two are J. Price & Co.'s.
Q. Those two are yours?
A. Yes, sir.
Q. You may also look at the contract dated the 27th day of August, 1872, between J. Price & Co., of Chicago, a party of the first

part, and Frank C. Taylor, of the same place, party of the second part, for the cut stone work to be done on a block of five dwelling houses located on North Dearborn street, southeast corner of Maple street, Chicago, and see if the signature on the first page of that contract is your signature, and also the signature of the party of the second part, to the supplemental contract on the back of that contract, and see if these two signatures are yours?

A. Yes, sir.

Q. Were those contracts made pursuant to the plans and specifications for this work?

A. Yes, sir.

Q. What architect drew these original plans and specifications?

A. Mr. Baumann.

Q. Were they drawn in duplicate, that is, were they drawn in more than one original draft?

A. Yes, sir; I think Mr. Baumann kept one of each.

Q. Who had the other one?

A. I think Mr. Price kept one, and Mr. Baumann the other. Then there was still a third contract, one of which Mr. Price kept, and I kept the other.

Q. Have you this original, which you kept, in your possession now?

A. The third contract?

Q. Yes.

A. I think I have.

Q. I mean the plans and specifications.

A. I don't know whether I have or not. What I refer to is a third contract.

Q. Was it these contracts?

A. No, sir; the contract covered those—

Q. I am not speaking about any contract that covered these. I am speaking about the plans and specifications that you say were drawn by Mr. Baumann?

A. I don't remember whether I have them or not.

Q. Did I understand you to say that you thought that there were three of those, or triplicates drawn?

A. Plans and specifications?

Q. Yes.

A. I don't know. I didn't refer to the plans and specifications in my previous answer.

Q. You know that there were plans and specifications to go with these contracts drawn by Baumann?

A. That is as I remember it.

Q. Did you ever have them in your possession—these plans and specifications?

A. I remember of having seen them.

Q. Where were they when you last saw them?

A. I don't remember.

Q. When do you remember of having seen them?

A. About the time the buildings were going up.

Q. Who then had them?

A. I don't remember whether I had them or Mr. Baumann, or both.

Q. You say you don't know where they are now?

A. No, sir. That is, I say I don't know whether I have them or not—whether I have a copy or not.

Q. You testified on Saturday in this cause, that you knew at the time when you joined in the four trust deeds to the Franklin Savings Bank, of Pawtucket, that you had on June 13, 1871, joined with your wife in the conveyance of the premises in question to Ira Scott, and marked "Exhibit D," partly for the benefit of your children, is that true?

A. I supposed the property belonged entirely to my wife, and at her death it went to the children?

Q. Is it true that you so testified on Saturday last?

A. I don't remember exactly what the wording of the testimony was on that point.

Q. Is it true that you supposed this conveyance was made to Ira Scott in trust, partly for the benefit of your children?

A. Indirectly; yes, sir.

Q. Is it also true that at the time you contracted with Grant & Price for the cut stone and mason work for the buildings to be put on said premises, you knew that you had joined with your wife in the said conveyance to Ira Scott, dated June 13, 1871, marked "Exhibit D," in this cause, partly for the benefit of your children?

A. I considered it property belonging to my wife only, and the children would have the benefit of it only at her death.

Q. Did you so consider at the time you entered into this contract?

A. I did.

Q. Did you so consider the terms of this original trust deed to Ira Scott, dated June 13, 1871, marked "Exhibit S?"

A. I don't know as I understand the question.

(Question read by reporter.)

A. The only way that I can answer that question is the same as I did the previous one.

Q. Answer it.

A. I understand that the question is that at the time I made the contract with Price—what I considered the children's interest in the property was, at the time I made the contract with Price, I supposed the children had no interest in it except at their mother's death.

Q. When did you first learn that they had an interest in it?

A. In June, 1877.

Q. At whose solicitation and request did Grant & Price contract to do this work?

A. Baumann's. I think that it was done in this was—

Q. Just answer the question.

A. I will change the answer. I don't know at whose solicitation.

Q. Did you just testify that you enjoyed or contracted with Grant & Price to do this work?

A. Yes, sir.

Q. At whose solicitation were those contracts made?

A. I think at Mr. Prices. They certainly were as far as I was concerned.

Q. I mean with reference to the party of the second part. Of course the contractors solicited to get the work—on your part, you have signed the contract as the party of the second part. Who represented that party in bringing about the negotiations with them which resulted in these contracts?

A. Mr. Baumann brought Price to my notice first.

Q. For whom was he acting?

A. Acting for Price and for me, as far as that is concerned.

Q. Were Grant and Price referred by you to any other person with reference to these contracts and to this work on the buildings at the time that these contracts were made?

A. I don't remember.

Q. Were they referred to your wife and to your children in the premises?

A. No, sir.

Q. Was any mention made by you to Grant & Price of this conveyance by yourself and wife to Ira Scott, dated June 13, 1871, and marked "Exhibit D," herein, at the time the contracts were made and the work was being done?

A. I suppose not.

Q. Did you ever make any statement to them in regard to it?

A. Not that I remember.

Q. Did you make contracts and enter into agreements with Grant & Price with reference to putting up these buildings, in your own name, or in the name of some other person?

A. My own name.

Q. At the time that you entered into those contracts with Grant & Price for the erection of these buildings, were you in possession of this property, and exercising acts of ownership over it yourself?

A. I don't know whether I was or not.

Q. Where were you then living?

A. Chicago.

Q. What part of Chicago? Were you then living on those premises?

A. No, sir. I was doing business in Chicago, but I was living in Riverside.

Q. This was in August, 1872, was it not?

A. Let me see.

Q. With reference to the time now that the contracts were being made?

A. In August, 1872, I think I was living in Evanston.

Q. Were you not living on this property?

A. Oh, no. How could I? It was not built then, you know.

Q. Were you not the sole person who represented this property in dealing with parties?

A. Yes, sir.

Q. And representing it to these parties in your own name, without mentioning the name of other parties being interested in the property. What I mean is you dealt with them as though it was your own property, in conversing with them?

A. Yes, sir.

Q. Had you at the time these contracts were made with Grant & Price, abstracts of title to this property showing who then owned it?

A. Yes, sir, I had it in this way—an abstract showing that the title was in Ira Scott, trustee.

Q. At what date?

A. Showing that the title was put in Ira Scott, June 13, 1871.

Q. When did you get that abstract showing the title in Ira Scott at that time?

A. June 20, 1872.

Q. Where was that abstract at the time these contracts were made?

A. I don't remember.

Q. Was it in your possession?

A. I don't remember.

Q. What was done with the abstract after you got it from the recorder?

A. That I don't remember.

Q. Was it delivered over to you?

A. I presume it was from the abstract makers.

Q. Did you pay for it?

A. I presume I did.

Q. Is there any other person who has had that abstract from the time it was made to August, 1872, but yourself?

A. Yes, sir; my attorneys had it. Mr. Scott had it.

Q. Was it at any time out of your reach or control?

A. I think not.

Q. At that time that these contracts were made in 1872, did the records in the recorder's office show who was the owner of this land, or the title to this land?

A. At what time?

Q. At the time those contracts were made. Did the records in the recorder's office show the title of this land down to that time?

A. It showed what I have above stated—that it was in Ira Scott, trustee.

Q. The records in the recorder's office showed that?

A. Oh! the recorder's office.

Q. Yes.

A. That I don't remember about. The records in the recorder's office were destroyed at the time of the fire.

Q. Then can you answer that question now—whether they showed who held the title to this land on the 27th day of August 1872—whether they showed it or not is the question.

A. I don't think it were shown in the recorder's office.

Q. Was there any other way by which the title at that time should be shown except by this abstract that you held?

A. The title could be shown in Mr. Scott by the books of Shortall & Hoard and Chase Bros.

Q. A full title, or anything more than the memoranda that you have referred to heretofore?

A. There were abstracts in existence held by the Newberry estate and others, that show the title shown to my wife, I think.

Q. What date was that?

A. That was, I should say, sometime in 1871—1870 or 1871.

Q. It was before the contracts were let for this work?

A. Yes, sir; and the books of Shortall & Hoard, and Chase Bros. and Jones & Sellers, show that the title was in Ira Scott, but did not show the body of the deed.

Q. Did not show what that deed contained?

A. No, sir.

Q. Were those books that you refer to public documents which parties could refer to at their will or discretion?

A. Anybody could refer to them by paying a small sum of money.

Q. Then they were not opened to public inspection.

A. They were, practically. Anybody could go in and see them by paying a small sum of money.

Q. Anybody?

A. Yes, sir.

Q. How large a sum?

A. I don't remember. To the best of my recollection that would be regulated by the amount of time they wanted to use in looking at the books, and how many of the books they wanted to look at.

Q. Can you fix on any figure as a basis for their charges?

A. I don't know that I can.

Q. There were at this time no records which were accessible, without paying for the inspection, that would show the title to this property.

A. I think equal facilities for seeing this title existed then, as exist now. I think the facilities that were considered good by most attorneys, existed at that time.

Q. Were there any facilities at that time to ascertain what were the contents of this deed marked "Exhibit D."

A. Not any, except the headings of it.

Q. Then what do you mean by stating that there were facilities at that time to enable one to learn the title to property, as good as the facilities now?

A. Because I think abstracts were in existence that most any attorney would rely upon down to 1870 or 1871.

Q. I am not speaking of that time. I am speaking of August 27, 1872.

A. And after that date—since 1870 and 1871, I think any one could have had access to certain books that were owned by the firms mentioned above, that would satisfy any attorney as to the names of the parties that the title of the property was in, but not as to the substance in details of various deeds. All parties have notice of whom the title was in.

Q. Then it is a fact that on the 27th day of August, 1872, there was no means by which parties dealing with this property could know the contents of this deed marked "Exhibit D?"

A. Not all the contents; they could know a portion of the contents. They could know who held the title.

Q. I will ask you this question. Did you ever show that abstract which you had under your control, on the 27th day of August, 1872, when you contracted with those parties, to Grant & Price?

A. I don't think I ever did.

Q. Did you ever intimate to them that this property had been deeded to Ira Scott in trust?

A. I don't think I did.

Q. Did you ever intimate to them in any way that any other person except yourself was interested in this land, as owner?

A. I don't think I did.

Q. Did your wife, or said Ira Scott, to your knowledge, have any consultations with Grant & Price as to the erection of these buildings?

A. I think not.

Q. Did they know that these buildings were being put up by Grant & Price?

Objected to by Mr. Brown.

A. I think it is very doubtful whether they knew who the contractors were.

Q. Did they know that they were being put up?

A. They did.

Q. Did they know that these contracts were made, or that contracts were made for the work?

A. I think it is very doubtful whether they knew of any contracts.

Q. Did you consult them in regard to putting up these buildings?

A. I did not, I only consulted my wife as to the internal arrangements of one of the houses.

Q. Did you have any conversation with Ira Scott about building these buildings before they were commenced?

A. No, sir; only as I would with any neighbor that I happened to meet, and speak of building some houses—nothing more than that.

Q. You had informed him that you were erecting buildings on this property—did he know of that fact?

A. He undoubtedly knew it.

Q. Were you at the time you entered into these contracts and ordered this work done, and had the over-sight of this work—were you acting for and on behalf of Scott, the trustee, and your wife and children?

A. No.

Q. For whom were you acting?

A. I was acting for myself.

Q. You were aware, were you not, that you had joined in this deed, conveying the property in trust to Ira Scott, for the benefit of your wife and children?

A. I was aware that I had joined in a deed to Ira Scott, conveying that property to him.

Q. You had read that trust deed?

A. Yes, sir.

Q. You knew substantially its contents?

A. I supposed that the property belonged to my wife.

Q. Then how do you say that you were acting for yourself in this matter entirely?

A. Because I expected to pay for the buildings.

Q. You say that you supposed the property belonged to your wife at this time?

A. Yes, sir.

Q. And that you have done all the work which has been done in the way of letting contracts and overseeing, and now you say you supposed you were acting entirely for yourself. How do you reconcile those statements?

A. Because I expected to pay for the buildings myself out of my own money.

Q. That is the only way you explain it?

A. Yes, sir.

Q. When did you say you received this money from the Franklin Savings Bank, secured by the four trust deeds now being foreclosed by the bank in this cause?

A. I received from the Franklin Savings Bank, on or about July 8, 1872, $10,000; and on or about October 15, $10,000; on or about November 1, $5,000; and on or about December 13, $5,000 for which I gave them my note of $30,000. In July—I think it was July of 1873, I gave them my four notes of $9,000 each, for which they gave me back my note of $30,000 and a check of $3,509.95.

Q. Was the cut stone and mason work completed or nearly completed on these buildings, at the time you received this money?

A. No, I think not. I think but a small portion of it was.

Q. Do you say you actually received the cash at the dates mentioned in this letter, from the bank on the four loans?

A. I will repeat the answer that I have just made. I will give the history of the whole thing.

Q. You have testified have you not, that these buildings were erected in the fall and winter of 1872 and 3?

A. No. I think I testified that they were not completed until the following summer.

Q. 1872 and the first part of '73?

A. In the fall of 1872 and the winter of 1872 and '73, and the spring of 1873, the substantial work was done.

Q. On what property was the $30,000 notes secured which has been put in evidence marked "Exhibit A?"

A. 104 feet on Dearborn street being the southeast corner of Dearborn and Maple.

Q. Was it the same property that was secured by the four mortgages given to the bank?

A. No; it was not.

Q. Was it not of the same property?

A. Yes, sir.

Q. Did it include all the property which is included in the four mortgages?

A. It did.

Q. And more?

A. Yes, sir.

Q. So that the $36,000 mortgages evidenced by the four trust deeds and notes, was in reality a renewal of the $30,000 mortgage with some addition to that amount?

A. Except one house and lot—yes, sir; practically so.

Q. Where is the trust deed that secures the $30,000 note, marked "Exhibit A?"

A. I am not certain where it is. I may have it among some of my papers, but I think not, unless Mr. Brown has it.

Q. When did you last see this trust deed securing the $30,000 note?

A. I don't remember.

Q. What was done with the money which you obtained on the $30,000 note?

A. I don't remember.

Q. Was it used in improving this property?

A. I think not.

Q. It is a fact that the $30,000 which was first borrowed from the bank was not put in these buildings?

A. I presume not.

Adjourned to 3 P. M.

3 P. M.

Parties met pursuant to adjournment, whereupon Mr. Taylor was cross examined by Mr. McNaughton as follows:

Q. Mr. Taylor, is this the property for which the Gowan Marble Company furnished some mantels and some other work?

A. Yes, sir.

Q. There is only four of the buildings in this suit?

A. That is all.

Q. There is one more in which the marble company furnished some work also?

A. Yes, sir.

Q. Mr. Scott, I believe, the trustee owns or owned some property near these buildings at that time?

A. Yes, sir.

Q. Was Mr. Scott aware of your erecting these buildings?

A. Yes, sir.

Q. About what time did he first become informed of that fact, that you were going to erect them?

A. About the time the building commenced.

Q. That was in the fall of 1872, was it?

A. Yes, sir.

Q. Well, was there any consultation between Mr. Scott and your wife and yourself in relation to the building of these buildings?

A. No, sir.

Q. There was no formal consultation?

A. No, sir.

Q. Was there any consultation by you with Mr. Scott in regard to these buildings?

A. No, sir.

Q. He knew you were building them and saw them being erected?

A. Yes, sir.

Q. Did he make any inquiry by whose authority or under what authority you were erecting them?

A. No, sir; he did not.

Q. About what time were the buildings fully completed?

A. In June, 1873.

Q. The kinds of mantels and hearths that were furnished for these buildings were appropriate to that kind of architecture—deemed so by you at that time?

A. Yes, sir.

Q. Did Mr. Scott make any inquiries in regard to where the funds were coming from that was to pay for those?

A. Not of me.

Q. Were you during the period extending from June, 1871, up to the first of July, 1873, in control and possession of that property—that is did you act in control and possession of that property?

A. I individually had no legal possession of the property.

Q. Did you control it?

A. I acted practically as though it was mine.

Q. You acted as though it was yours.

A. Yes, sir.

Q. Was your wife aware of that?

A. Well, I don't know whether she was or not.

Q. Could she have been ignorant of it?

A. She might have been from the fact that I never did any business in her presence or talked with any of the contractors in her presence and never repeated any of my conversations with such contractors to her.

Q. Did she know of these buildings being erected?

A. Yes, sir.

Q. Did Mr. Scott know of your acting with this property the same as if it was your own?

A. He had no knowledge of what I was doing of any kind with any of the contractors.

Q. But as to your control of the property, he knew that you were building upon it and that you were acting with that as if it was your own?

A. I am not aware that he had any knowledge of it one way or the other, how I was acting.

Q. Mr. Scott resigned as trustee, I believe, on the 21st day of July, 1873, did he not?

A. I think that was the time.

Q. And Mr. Morgan was appointed August 19, 1873, by a decree of court?

A. I believe that is the date.

Mr. BROWN: I will ask you whether or not Mr. Scott knew whether you were in the habit of consulting your wife?

A. He did'nt know.

Q. As a matter of fact, how was it with your wife in regard to business matters? Did she take an active interest? Has she ever occupied herself with the business affairs, even of her own property?

A. Not at all.

Mr. MCNAUGHTON: In whose hands did she leave it to attend to that property?

A. In my hands.

Mr. BROWN: Do you mean by that Mr. Taylor any more than that she allowed you to attend to it, when you say that she left it to you; how do you mean to be understood; that she did not interfere with what you did?

Objected to.

A. She never interfered at all with anything that I choose to do.

Q. Did your wife know to your knowledge whether you consulted Mr. Scott about this business?

A. She did not.

Q. Then you may have been in constant consultation with Mr. Scott in relation to these matters and in relation to these loans, and your wife not have known it?

A. Yes, sir.

Q. And as a matter of fact, she didn't know whether you were or not?

Objected to.

A. She did not.

Mr. McNAUGHTON: So far as you know.

A. So far as I know?

Q. I believe you answered that you might have been in consultation with Mr. Scott and your wife not have known it. As a matter of fact, were you in consultation with Mr. Scott from the fall of 1872 until the 30th of June, 1873, in relation to this property?

A. When I began to think about restoring the title.

Q. About what time was that?

A. Then I began to talk with Mr. Scott, and that was in the—

Q. The bill was filed January 30, 1873?

A. Well, along in November and December, 1872, I began to talk with Mr. Scott, more or less, about restoring the title and other matters connected with the property, building and so on.

Q. Did you state what your object was in desiring to have the title restored?

A. I presume I did.

Q. What did you state as your object?

A. One was, I wanted a good title to the property shown for the benefit of all parties in interest. Another was, that I might have to negotiate another loan on it as I might not be able to pay the $30,000 loan that was already on it.

Q. Any other object?

A. In case I should want to sell the property, it would be necessary to show a good title.

Q. Anything else?

A. I think not.

Q. Was anything spoken of in case you should desire to build?

A. We had already begun to build at that time.

Q. Was it spoken of that you had already begun to build?

A. I have no doubt of it. He knew we already had.

Q. That was, as you understand, in November and December, 1872?

A. Yes, sir; and the buildings were commenced in August or September, 1872.

Q. Did he make any objection at that time?

A. Not that I remember of.

H. He knew that you were having dealings with artificers and others in the erection of these bnildings?

A. He must have known that I would have to make contracts with certain builders and mechanics.

Mr. BROWN: Or that somebody would?

A. Yes, sir.

Mr. JAYNE: I would like to ask you one question in regard to the cost of these buildings and their value. You have stated in your testi-

mony that you considered the improvements made on the premises as having been advantageous to the premises, was that the substance of what you said?

A. I think that since the buildings were completed I have come to the conclusion that it was a great misfortune to the property that they were put up.

Q. Did the misfortune to which you refer grow out of mismanagement at the time the buildings were put up, or out of the depreciation in real estate investments and residence property since that time?

A. Both.

Q. What proportion of the sacrifice which you consider the property has realized by the improvements, has been occasioned by mismanagement in the buildings?

A. About 25 per cent.

Q. And the other 75 per cent. you attribute to the depreciation in the price of property?

A. Yes, sir.

Q. What was the mismanagement that you refer to?

A. That I made contracts with contractors that could not keep their contracts. That was one thing.

Q. You don't want to be understood as having exhibited anything but good management on your own part in letting these contracts?

A. Well, I think my management was rather poor.

Q. What proportion of the 25 per cent. you refer to, do you attribute to your own mismanagement?

A. Well, about 25 per cent. of that 25 per cent.

Q. Is that small valuation that you put upon the premises now in comparison to the valuation that you put upon the premises at the time you applied for this loan, caused solely by the depreciation of the price of property between those two times?

A. Well, almost entirely.

Mr. McNAUGHTON: This was previous to the panic, wasn't it Mr. Taylor?

A. Yes, sir.

Q. Was the erection of these buildings at this time viewed in the light of the circumstances then existing, such as a prudent man would have done?

A. I think now that a prudent man—

Q. In relation to that time?

A. I think not.

Q. You would think not?

A. Yes, sir.

Q. You are the same Frank Taylor that was a party to an action or suit in equity, No. 44,331, in the Superior court of Cook county—*Frank C. Taylor* vs. *Ira Scott, et al?*

A. Yes, sir.

Q. In that decree you and Maria L. Taylor were awarded $53,700 as having been expended upon this property, to be paid to you out of the rents and profits of the property, were you not?

Objected to on the ground that the decree speaks for itself.

A. I don't remember how it was awarded.

Q. Did you know of such decree?

A. I don't remember the reading of the decree.

Q. Did you know that you received a decree of $53,700, for expenditure on this property and improvements?

A. I think that the amount that you mention was mentioned in that decree. I don't remember what it was.

Q. Did you think at the time of the expenditure of this money in these buildings in 1872 and 1873, that the expenditure was wise and judicious.

A. I thought so in 1872.

Q. Did you think so up to and including August 19, 1873, at the time of that decree?

A. No; I did not.

Q. At what time did you first begin to have doubts as to the wisdom and judiciousness of this?

A. When I found that the buildings were not going to be done in time for me to make five year leases on the 1st of May, 1873, for the reason that I could have made five year leases at about $300 per annum more than when the buildings were done.

Q. But the buildings were then so far progressed that it would have been unwise to have stopped, and not completed them?

A. Yes, sir.

FRANK C. TAYLOR.

Subscribed and sworn to before me, this 8th day of April, A. D. 1878.

HENRY W. BISHOP,

*Master in Chancery, Circuit court, United States, Northern District Illinois.*

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

The Franklin Savings Bank, of Pawtucket, *Complainant.*

*vs.*

Frank C. Taylor, *et al.* *Defendants.*

Testimony taken before Henry W. Bishop, master in chancery of said court, Saturday, April 10, A. D., 1880.

Present: WILLIAM H. SWIFT, of the firm of Grant & Swift, solicitors for complainant, and EDWARD O. BROWN, guardian *ad litem* for all the infant defendants and also solicitor for Maria L. Taylor, and Charles H. Mulliken, trustee.

Counsel for the complainant offers in evidence a certified copy of the record in the case of *Frank C. Taylor, et al.*, vs. *Ira Scott et al.*, brought and determined in the Superior court of Cook county, Illinois, and duly certified by John J. Healy, clerk of said court, under the seal of said court, April 16th, A. D. 1878, and identified by the initials "A. B. 1."

Also a certified copy of the record in a certain other cause of *Frank C. Taylor*, vs. *Ira Scott, et al.*, heard and determined in said Superior court, and duly certified by John J. Healy, clerk of said court, under the seal of said court, upon the 16th day of April, A. D., 1878. Which record is marked for identification "A. B. 2."

Complainant's solicitor also offers in evidence four letters from defendant Frank C. Taylor to George W. Newell, cashier of the complainant bank, dated respectively, June 27, 1872, November 26, 1872, August 23, 1873, and October 20, 1873, and marked in the order of their dates with the initials "A. B." and the numbers "3," "4," "5," and "6."

Complainant's solicitor also introduces in evidence on application for a loan of $36,000, dated June 13, 1873, addressed to George W. Newell, as treasurer for complainant, and signed by the defendant Frank C. Taylor, which is identified by the initials "A. B. 7."

WILLIAM H. SWIFT, a witness produced on behalf of complainant, being duly sworn, testifies upon direct examination as follows:

I am one of the solicitors for the complainant in this cause.

Since the filing of the original bill herein, our firm has paid taxes for the complainant, with the funds of the complainant, upon the property described in the mortgages, and in the original and supplemental bills as follows:

August 26, 1876, $1,015.34. And for tax certificates upon said premises, our firm paid upon the 11th of September, 1876, the sum of $85.73.

I hold in my hand the tax certificates, four in number, for which said sum of $85.73 was paid. The same introduced in evidence and marked "A. B. 8," "A. B. 9," "A. B. 10," and "A. B. 11."

I also hold in my hand the tax receipts for the $1,015.34; one for $793.53, introduced in evidence and marked "A. B. 12," one for $193.83, introduced in evidence and marked "A. B. 13," and one for $30.98 introduced in evidence and marked "A. B. 14."

Cross examination waived.

WILLIAM H. SWIFT.

Subscribed and sworn to before me, this 10th April, 1880.

H. W. BISHOP,

*Master in Chancery of the Circuit court of the United States, for the Northern District of Illinois.*

Master's fees: To attendance and testimony, total 246 pages, at 30cts., $73.80. Including payment to reporters.

On the back is endorsed; Testimony taken before H. W. Bishop, master, etc. Filed April 17, 1880.

W. H. BRADLEY, *Clerk.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 23," the master's report of sale, filed June 23, 1880, in said cause, which is as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

The Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor, Robert E. Taylor, Charles H. Mulliken, trustee, Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar, as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska.

MASTER'S REPORT OF SALE.

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

The undersigned, Henry W. Bishop, as master in chancery of said court, respectfully reports that in pursuance of a decree of the said court entered in the above entitled cause, on the 29th day

of April, A. D. 1880, wherein it was, among other things, ordered that in default of payment within ten days from the date of entry of said decree by the defendants, Frank C. Taylor, Maria L. Taylor, wife of said Frank C. Taylor, and Charles H. Mulliken, trustee, or some of the other defendants in this cause for the said complainant, of the sum of $61,603.21, with interest thereupon at the rate of six per cent per annum from the date of the entering of said decree to the day of such payment, and that in default of payment within ten days from the date of the entry of the said decree by the defendant, Frank C. Taylor, or some of the other defendants in this cause, to the said complainant, of the sum of $4,740.25, with interest thereon at the rate of six per cent. per annum from the date of the entering of the said decree to the day of such payment, then the premises described in the bill of complaint in this cause and hereinafter described, should be sold to satisfy the indebtedness secured thereby as therein adjudged and determined, and that such sale be made by Henry W. Bishop, a master in chancery of this court, at the front door upon LaSalle street, of the building in which this court was then held in the city of Chicago, Cook county, Illinois, in the manner and upon the terms and notice in said decree mentioned, and the said defendants having made default in payment of the moneys in said decree mentioned within said period of ten days, and the same remaining wholly unpaid, the undersigned in accordance with said decree, as such master in chancery, advertised said premises and property for sale at public auction to the highest bidder for cash in hand, in the *Chicago Legal News*, a weekly secular newspaper of general circulation, printed and published in the city of Chicago, county of Cook and State of Illinois, the date of the first paper containing said advertisement being the 22d day of May, A. D. 1880, and the date of the last paper containing the same being the twelfth (12th) day of June, A. D. 1880, the said advertisement having been published in said newspaper for four successive weeks, to-wit: Four times prior to the day of sale named herein and as appears by a certified copy of said advertisement and certificate of publication thereof hereto attached and made a part thereof. That at the hour, day and place fixed and mentioned in said advertisement, to-wit: At the hour of eleven (11) o'clock in the forenoon of Wednesday, the sixteenth (16th) day of June, A. D. 1880, at the front door upon LaSalle street of the building in which this court was formerly held, in the city of Chicago, Cook county, Illinois, the undersigned as such master in chancery did offer the premises and property in the said decree and advertisement mentioned and described as follows, to-wit: Lot one, two and four and five, in the subdivision of lot four, in block sixteen, Bushnell's addition to Chicago, county of

Cook and State of Illinois, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the twentieth day of July, A. D. 1874, in a certain cause then pending in said court in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, The Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor were defendants, for sale at public auction to the highest and best bidder for cash in hand and as directed in the said decree, the undersigned as such master, first offered for sale the right, title and interest of the defendants, Frank C. Taylor and Maria L. Taylor, his wife, in the premises to be sold, and no one bid for the same offered in that way; the undersigned then offered for sale, as directed in said decree, said premises discharged from all claims by or on behalf of any and all of the defendants to this cause except the equity of redemption which might be given by the laws of the State of Illinois, and discharged from all trusts heretofore existing in favor of either of said defendants, and as follows: The undersigned first offered for sale said lot one and then and there struck off and sold the same for the sum of $15,000 to the said complainant, the undersigned then offered for sale said lots two, four and five in lots separately and then and there struck off and sold each of said lots separately for the sum of $12,000 for each lot to the said complainant and those being the highest and best bids for said lots.

And as provided for in said decree, said complainant being purchaser as aforesaid by its solicitors, has only paid over to the undersigned the sum of..... .....being the amount of the taxed costs herein, and has also paid the master's fees, commissions and disbursements on said sale.

And the undersigned further reports that he has executed and delivered to said purchaser certificates of sale and has filed in the office of recorder of deeds of said Cook county, Illinois, duplicates of such certificates, paying the fees for the record thereof. A particular statement of said sale is hereto annexed, made a part hereof and marked "Exhibit A."

All of which is respectfully submitted.

HENRY W. BISHOP,

*Master in Chancery of the Circuit court of the United States, for the Northern District of Illinois.*

Dated, Chicago, June 23, 1880.

"EXHIBIT A."

1880.

| | | |
|---|---|---|
| April 29, decree for payment of | $15,461 25 | |
| | 15,371 82 | |
| | 15,385 07 | |
| | 15,385 07 | |
| | | $61,603 21 |
| Interest thereon to sale | | 482 54 |
| Decree for payment of | | 4,740 25 |
| Interest thereon to sale | | 37 13 |
| Taxed costs | | 381 85 |
| | | $67,244 98 |
| Master's commission on sale | | 750 00 |
| Certificate of sale and paid recording | | 5 00 |
| | | $67,999 98 |
| Brought forward | | 67,999 98 |
| Paid advertising sale | | 12 00 |
| Report of sale | | 5 00 |
| | | $68,016 98 |
| Sold to complainant for | | 51,000 00 |
| Deficiency | | $17,016 98 |

Received of Henry W. Bishop, master in chancery, the sum of $381,85 being the amount of the taxed costs herein.

WM. H. BRADLEY, *Clerk.*

Settled with W. H. Bishop, master in chancery, in accordance with the above statement.

GRANT & SWIFT,

*Solicitors for Complainants.*

I, Myra Bradwell, president of the Chicago Legal News Company, do hereby certify that a notice of masters' sale in the case of *Franklin Savings Bank, etc.*, vs. *Frank C. Taylor*, of which the annexed printed slip is a true copy, was published for four successive weeks, to-wit: Four times in the *Chicago Legal News*, a weekly secular newspaper, published every Saturday, in the city of Chicago, county of Cook and state of Illinois, of general circulation throughout said county and state and especially authorized by law to publish legal notices in said city and county, and that the date of the first paper containing the same was the 22d day of May, A. D. 1880, and that the date of the last paper containing the same was the 12th day of June, A. D. 1880.

In witness whereof, the president of said Chicago Legal News Company has hereunto affixed the seal of said company, and subscribed her name, at the city of Chicago this 12th day of June, A. D. 1880.

MYRA BRADWELL,

*President.*

And I further certify that said company has received $12 for publishing the said notices.

MYRA BRADWELL,

Geo.

MASTERS' SALE.

UNITED STATES OF AMERICA.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

Dated Chicago, May 22, 1880.

HENRY W. BISHOP,

*Master in chancery of the Circuit court of the United States for the Northern District of Illinois.*

GRANT & SWIFT,

*Solicitors for Complainant.*

On the back is endorsed: Masters' report of sale under decree. Filed June 23, 1880.

WM. H. BRADLEY, *Clerk.*

on Wednesday, the sixteenth (16th) day of June, A. D. 1880, at eleven (11) o'clock in the forenoon of the said last named day, and in the manner directed in the said decree, the premises and property in the said decree mentioned and described as follows, to-wit:

Lots 1, 2, 4, and 5 in the subdivision of lot 4 in block 16, Bushnell's addition to Chicago, county of Cook, and state of Illinois, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, subject only to the prior lien of a certain decree, rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court, in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan, were petitioners and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, the Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor, were defendants, to which decree reference is hereby made.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert E. Taylor, Charler H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar as administrator of the estate of John Weisharr, deceased; Ellis L. Chesborough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska.

In pursuance of a decree of the said court entered in the above entitled cause, on the 29th day of April, A. D. 1880, I, Henry W. Bishop, master in chancery of the said court, will sell at public action to the highest and best bidder for cash in hand, at the front door, upon LaSalle street, of the building in which this court formerly held in the city of Chicago, Cook county, Illinois,

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit No. 24," the decree entered December 23, 1881, confirming the masters report of sale in said cause, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*Complainant,*
*vs.*
Frank C. Taylor, *et al.*
*Defendants.*
} *In Chancery.*

Present: The Honorable HENRY W. BLODGETT, Judge.

And now again comes the complainant, by Grant and Swift, its solicitors, and this cause comes on to be further heard upon the report of sale by Henry W. Bishop, master in chancery filed herein on the 23d day of June, A. D. 1880, and thereupon, on motion of said complainant's solicitor, no cause to the contrary having been shown and said sale and the actings and doings in said report mentioned appearing to have been done in conformity to law and the order of this court, it is ordered and decreed that said report and sale and the aforesaid actings and doings of said master in chancery be, and they are fully approved and confirmed, and it is ordered by the court that this order be entered *nunc pro tunce*, and stand and take effect as of the 23d day of December, A. D. 1881.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit No. 25," the three masters deeds, which are as follows:

This identiture made this 27th day of December, A. D. 1881, between Henry W. Bishop, as master in chancery of the Circuit court of the United States for the Northern district of Illinois, party of the first part, and the Franklin Savings Bank, of Pawtucket, Rhode Island, party of the second part, witnesseth:

Whereas, in pursuance of a decree entered on the 29th day of April, A. D. 1880, by the said court, in a certain case than pending therein, wherein the Franklin Saving Bank, of Pawtucket, Rhode Island, was complainant, and Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert E. Taylor, Charles H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet H. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster, and Adam J. Wecklar, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar, as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska were defendants; the said master in chancery duly advertised, according to law, the premises hereinafter described, for sale at public auction to the highest and best bidder, for cash in hand, at the hour of eleven o'clock in the forenoon on the 16th day of June, A. D. 1880, at the front door upon LaSalle street of the building in which said court was formerly held in the city of Chicago, Cook county, Illinois.

And whereas, at the time and place so as aforesaid appointed for said sale, the said master in chancery attended to make the same, and offered said premises for sale at public auction, to the highest and best bidder, for cash in hand, and thereupon the Franklin Savings Bank, of Pawtucket, Rhode Island, offered and bid therefor the sum of fifteen thousand dollars ($15,000) and that being the highest and best bid offered, said master in chancery accordingly struck off and sold to said Franklin Savings Bank, of Pawtucket, Rhode Island, for said sum of money, the said premises, and did thereupon sign, seal and deliver to said the Franklin Savings Bank, of Pawtucket, Rhode Island, the usual master's certificate therefor.

And whereas, said premises have not been redeemed from said sale, now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of

the second part of its successors and assigns, the said premises, described as follows, to-wit: Lot one in the subdivision of lot four in block sixteen, Bushnell's addition to Chicago, county of Cook, and State of Illinois, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, subject only to the prior lien of a certain decree rendered by the circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan were petitioners and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, the Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor, defendants. To have and to hold the same, with all the appurtenances thereunto belonging, unto the said party of the second part, its successors and assigns for ever.

Witness the hand and seal of the said party of the first part, the day and year first above written.

[SEAL] HENRY W. BISHOP,

*Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Edmund Gorvett, a notary public, in and for the said county, in the state aforesaid, do hereby certify that Henry W. Bishop, master in chancery of the Circuit court of the United States, for the Northern district of Illinois, who is personally known to me to be the same person whose name subscribed to the annexed deed of conveyance, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, as such master in chancery for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 27th (notarial) day of December, A. D. 1881.

EDMUND GORVETT,

[SEAL] *Notary Public.*

[Endorsed]: State of Illinois, county of Cook, ss. No. 376,620. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 20th day of February, A. D. 1882, at 2 o'clock P. M., and recorded in book 1,125 of records, on page 579.

JAS. W. BROCKWAY,

*Recorder.*

This indenture made this 27th day of December, A. D. 1881, between Henry W. Bishop, as master in chancery of the Circuit court of the United States, for the Northern district of Illinois, party of the first part, and the Franklin Savings Bank, of Pawtucket, Rhode Island, party of the second part, witnesseth:

Whereas, in pursuance of a decree entered on the 29th day of April, A. D. 1880, by the said court, in a certain case then pending therein, wherein the Franklin Savings Bank, of Pawtucket, Rhode Island, was complainant, and Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert C. Taylor, Charles H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet H. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executor of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of Frank C. Taylor and the State Bank of Nebraska, were defendants, the said master in chancery duly advertised, according to law, the premises hereinafter described, for sale at public auction to the highest and best bidder, for cash in hand, at the hour of 11 o'clock in the forenoon, on the 16th day of June, A. D. 1880, at the front door upon LaSalle street of the building in which said court was formerly held in the city of Chicago, Cook county, Illinois.

And whereas, at the time and place so as aforesaid appointed for said sale, the said master in chancery attended to make the same, and offered said premises for sale at public auction to the highest and best bidder, for cash in hand, and thereupon the Franklin Savings Bank, of Pawtucket, Rhode Island, offered and bid therefor, the sum of twelve thousand dollars ($12,000) and that being the highest and best bid offered, said master in chancery accordingly struck off and sold to said the Franklin Savings Bank, of Pawtucket, Rhode Island, for said sum of money, the said premises and did thereupon sign, seal and deliver to said the Franklin Savings Bank, of Pawtucket, Rhode Island, the usual master's certificate therefor.

And whereas, said premises have not been redeemed from said sale, now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, its successors and assigns, the said premises, described as follows, to-wit:

Lot four, in the subdivision of lot four in block sixteen, Bushnell's addition to Chicago, county of Cook and state of Illinois, together with all and singular, the tenements, hereditaments and

appurtenances thereunto belonging, subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court, in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan, were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, the Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor, were defendants. To have and to hold the same, with all the appurtenances thereunto belonging, unto the said party of the second part, its successors and assigns forever.

Witness the hand and seal of the said party of the first part, the day and year first above written.

HENRY W. BISHOP, [SEAL.]

*Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Edmund Gorvett, a notary public, in and for the said county, in the state aforesaid, do hereby certify that Henry W. Bishop, master in chancery of the Circuit court of the United States, for the Northern district of Illinois, who is personally known to me to be the same person whose name is subscribed to the annexed deed of conveyance, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, as such master in chancery for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 27th day of December, A. D. 1881.

EDMUND GORVETT,

[NOTARIAL SEAL] *Notary Public.*

[Endorsed]: State of Illinois, county of Cook, ss. No. 376,621. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 20th day of February, A. D. 1882, at 2 o'clock P. M., and recorded in book 1,125 of records, on page 580.

JAMES W. BROCKWAY,

*Recorder.*

This indenture, made this 27th day of December, A. D. 1881, between Henry W. Bishop, as master in chancery of the Circuit court of the United States, for the Northern district of Illinois, party of the first part, and the Franklin Savings Bank, of Pawtucket, Rhode Island, party of the second part, witnesseth:

Whereas, in pursuance of a decree entered on the 29th day of April, A. D. 1880, by the said court, in a certain case then pending therein, wherein the Franklin Savings Bank, of Pawtucket, Rhode Island, was complainant, and Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert C. Taylor, Charles H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet H. Carmichael, Michael Bryne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster, and Adam J. Weckler, as executor of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts, and Emil B. Weishaar, as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska, were defendants; the said master in chancery duly advertised, according to law, the premises hereinafter described, for sale at public auction to the highest and best bidder, for cash in hand, at the hour of 11 o'clock in the forenoon, on the 16th day of June, A. D. 1880, at the front door upon LaSalle street of the building in which said court was formerly held in the city of Chicago, Cook county, Illinois.

And whereas, at the time and place so as aforesaid appointed for said sale, the said master in chancery attended to make the same, and offered said premises for sale at public auction to the highest and best bidder, for cash in hand, and thereupon the Franklin Savings Bank, of Pawtucket, Rhode Island, offered and bid therefor the

sum of twelve thousand dollars ($12,000), and that being the highest and best bid offered, said master in chancery accordingly struck off and sold to the said Franklin Savings Bank, of Pawtucket, Rhode Island, for said sum of money, the said premises, and did thereupon sign, seal, and deliver to the said Franklin Savings Bank, of Pawtucket, Rhode Island, the usual master's certificate therefor.

And whereas, said premises have not been redeemed from said sale, now, therefore, in consideration of the premises, the said party of the first part doth hereby convey unto the said party of the second part, its successors and assigns, the said premises, described as follows, to-wit:

Lot five, in the subdivision of lot four in block sixteen, Bushnell's addition to Chicago, county of Cook and State of Illinois, together with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court, in which Henry Gilsdorff, Frederick Baumann, and James B. Sullivan, were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, the Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken, and George Taylor were defendants. To have and to hold the same, with all the appurtenances thereunto belonging unto the said party of the second part, its successors and assigns forever.

Witness the hand and seal of the said party of the first part, the day and year first above written.

[SEAL.] HENRY W. BISHOP,

*Master in Chancery of the Circuit court of the United States, for the Northern District of Illinois.*

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, Edmund Gorvett, a notary public, in and for the said county, in the state aforesaid, do hereby certify that Henry W. Bishop, master in chancery of the Circuit court of the United States, for the Northern district of Illinois, who is personally known to me to be the same person whose name is subscribed to the annexed deed of conveyance, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, as such master in chancery, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 27th day of December, A. D. 1881.

EDMUND GORVETT,
*Notary Public.*

[NOTARIAL SEAL.]

[Endorsed]: State of Illinois, county of Cook, ss. No. 376,622. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 20th day of February, A. D. 1882, at 2 o'clock P. M., and recorded in book 1,125 of records, on page 581.

JAS. W. BROCKWAY,
*Recorder.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 26," order entered in said cause November 3, 1881, approving master's deeds to Frank C. Taylor, Jr., and others, which is as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert C. Taylor, Charles H. Mulliken trustee; Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executor of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts, and Emil B. Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of Frank C. Taylor and the State Bank of Nebraska. } *In Chancery.*

NOVEMBER, A. D., 1881.

On this day comes said complainant by Grant & Swift, solicitors, and also comes Henry W. Bishop, a master in chancery of this court, and presents to the conrt the deed of said master, conveying to Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, assignees of Orville Peckham, who was the assignee of the Franklin Savings Bank, a portion of the premises in the bill of complaint herein mentioned, to-wit: Lot two (2) in the subdivision of lot four (4) in block sixteen (16), Bushnell's addition to Chicago,

county of Cook and state of Illinois, in accordance with the sale in this cause heretofore reported by said master, which deed bears date the 3d day of November, A. D. 1881.

And it appearing to the court that no redemption has been made from said sale and that said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor are entitled to said deed, it is therefore ordered by the court that said master's deed be approved and confirmed, and the said master is directed to deliver the same to the said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert E. Taylor.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 27," an order entered by said court December 27, 1881, approving the other deeds issued by said master, which is as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, and others.
} *In Chancery.*

A. D. 1881.

On this day comes said complainant, by Grant & Swift, its solicitors, and also comes Henry W. Bishop, master in chancery of this court and presents to the court the deed of said master, conveying to said complainant the premises in the bill of complaint herein mentioned in accordance with the sale in this cause heretofore reported by said master, which deeds bear date the 27th day of December, A. D. 1881. And it appearing to the court that no redemption has been made from said sale and that said complainant is entitled to said deed, it is therefore, on motion of said complain-

ant's solicitor's ordered by the court that said master's deeds be approved and confirmed and the said master is directed to deliver the same to said complainant.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 28," two certain deeds to Julia S. Taylor, both dated November 10, 1873, which are as follows:

This indenture, made this 10th day of November, in the year of our Lord, one thousand, eight hundred and seventy-three (1873), between Charles H. Mulliken, trustee, and Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook, and State of Illinois, party of the first part and Julia S. Taylor, of said city, party of the second part, witnesseth:

That the said party of the first part, in consideration of $15,000 to them in hand paid, by said party of the second part, the receipt whereof is hereby acknowledged, by these presents do release, alien, convey and quit-claim unto the said party of the second part, and to her heirs and assigns forever, all the right, title, interest, claim and demand, which the said party of the first part have in and to the following described piece of land, situated in the county of Cook and state of Illinois, to-wit: Lot three (3), in the subdivision of lot four (4), of block sixteen (16), Bushnell's addition to Chicago, according to the map of said subdivision recorded in the office of the recorder of deeds of said Cook county, in book five (5) of maps, on page twenty-four (24), said land being situate in the said city of Chicago, in the county and state aforesaid.

To have and to hold the same, together with all and singular, the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, dower, right of dower and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit and behalf of the said party of the second part, her heirs, and assigns forever.

And the party of the first part, for the consideration above mentioned, do hereby expressly waive and release all right and benefit which they have in and to said premises, or to which they may be entitled, under and by virtue of any and all laws of the state of Illinois, relating to the exemption of homesteads from sale on execution. The said F. C. and Maria L. Taylor join in the execution hereof for the purpose of signifying their request in writing to said Mulliken that this conveyance be made in accordance with all the terms and provisions thereof.

In witness whereof, the said party of the first part, hereunto set their hands and seals the day and year above written.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

I, Lucius Hoyt, a notary public, in and for said city in said county, residing in Evanston, in said county, in the state aforesaid, do hereby certify, that Charles H. Mulliken and Frank C. Taylor and Maria L. Taylor, his wife, who are personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, including the waiver and release of the right of homestead,

And the said Maria L. Taylor, wife of said Frank C. Taylor, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all her right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead exemption laws so called, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, }
this 10th day of November, A. D. 1873. }

LUCIUS HOYT,
*Notary Public.*

Filed for record in the recorder's office in Cook county, Illinois, on the 15th day of November, A. D. 1873, and duly recorded in book 146 of records, page 409, November 21, A. D. 1873, No. 136,060.

JAMES STUART,
*Recorder.*

This indenture made this 10th day of November, in the year of our Lord, one thousand eight hundred and seventy three (1873), between Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook and state of Illinois, party of the first part, and Julia S. Taylor, of said city, party of the second part, witnesseth: That the said party of the first part, in consideration of fifteen ($15) dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, by these presents do grant, bargain, sell, release, alien, convey, and confirm unto the said party of the second part, and to her heirs and assigns forever, all the following described piece of land, situate in the county of Cook and the state of Illinois, to wit: Lot three (3) in the subdivision of lot four (4) of block sixteen (16), Bushnell's addition to Chicago, according to the map of said subdivision recorded in the office of the recorder of deeds of said Cook county, in book five (5) of maps on page twenty-four (24), said land being situate in said city of Chicago, in the county and state aforesaid.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appurtaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold the same, unto the party of the second part her heirs and its assigns forever.

And the said Frank C. Taylor and Maria L. Taylor, party of the first part, for themselves, their heirs, executors and administrators, do hereby covenant, promise and agree to, and with the party of the second part, her heirs and assigns, that the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefensible estate of inheritance in the law in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, tax sales and incumbrances of what kind and nature soever, and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, her heirs and assigns against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. And the said party of the first part, for the consideration above mentioned, do hereby expressly waive and release

all right and benefit which they have in and to said premises, or to which they may be entitled, under and by virtue of any and all laws of the state of Illinois, relating to the exemption of homesteads, from sale on execution.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year above written.

FRANK C. TAYLOR. [SEAL]
MARIA L. TAYLOR. [SEAL]

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO, }

I, Lucius Hoyt, a notary public, in and for said city in said county, residing in Evanston, in said county, in the state aforesaid, do hereby certify, that Frank C. Taylor and Maria L. Taylor, his wife, who are personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, as their free and voluntary act, for the uses and purposes therein set forth, including the waiver and release of the right of homestead.

And the said Maria L Taylor, wife of said Frank C. Taylor, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all her right, title and interest in and to the lands and tenements therein mentioned and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all homestead exemption laws so called, without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and notarial seal, }
this 10th day of November, A. D. 1873. }

LUCIUS HOYT,
*Notary Public.*

Filed for record in the recorder's office in Cook county, Illinois, on the 15th day of November, A. D. 1873, and duly recorded in book 302 of records, page 43, November 19th, 1873, No. 136,061.

JAS. STUART,
*Recorder.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit No. 29," five notes, together with five deeds of trust securing the same respectively, which are as follows:

$9,000. CHICAGO, August 23, 1873.

Five years after date we promise to pay to the order of the Franklin Savings Bank, the principal sum of $9,000, with interest at the rate of 9½ per centum per annum, payable semi-annually. Said interest until the maturity hereof being also secured by ten coupons given herewith each for the sum of $427.50, both principal and interest payable at the Fourth National Bank, Chicago, Illinois.

This note and the coupons hereunto annexed bear interest after maturity at the rate of ten per centum per annum and are secured to be paid by a deed of trust bearing even date herewith executed by Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor to Francis S. Howe.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

COUPONS.

$427.50 CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50 on the 23d day of August, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank of $9,000, five years after the date thereof.

No. 10.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 9.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 8.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 7.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H MULLIKEN,
*Trustee.*

$427.50 CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, $9,000, five years after the date thereof.

No. 6.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50 CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 5.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 4.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 3.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

The last coupon is endorsed: Pay to Fourth National Bank, Chicago.

G. W. NEWELL,
*Treasurer.*

$9,000. CHICAGO, August 23, 1873.

Five years after date we promise to pay to the order of the Franklin Savings Bank the principal sum of $9,000 with interest at the rate of 9½ per centum per annum, payable semi-annually. Said interest until the maturity hereof being also secured by ten coupons given herewith each for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50), both principal and interest payable at the Fourth National Bank, Chicago, Illinois. This note and the coupons hereunto annexed bear interest after maturity at the rate of ten per centum per annum and are secured to be paid by a deed of trust bearing even date herewith executed by Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor to Francis S. Howe.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 10.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 9.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 8.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 7.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, $9,000, five years after the date thereof.

No. 6.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years yfter the date thereof.

No. 5.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 4.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 3.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHAS. H. MULLIKEN,
*Trustee.*

The last coupon is endorsed: Pay to the Fourth National Bank, Chicago.

G. W. NEWELL,
*Treasurer.*

$9,000. CHICAGO, August 23, 1873.

Five years after date we promise to pay to the order of the Franklin Savings Bank the principal sum of $9,000 with interest at the rate of 9½ per centum per annum, payable semi-annually. Said interest until the maturity hereof being also secured by ten coupons given herewith each for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50), both principal and interest payable at the Fourth National Bank, Chicago, Illinois. This note and the coupons hereunto annexed bear interest after maturity at the rate of ten per centum per annum and are secured to be paid by a deed of trust bearing even date herewith executed by Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor to Francis S. Howe.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN.
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 10.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23,.1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 9.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said the Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 8.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 7.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN.
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, $9,000, five years after the date thereof.

No. 6.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 5.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN.
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 4.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 3.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$9.000. CHICAGO, August 23, 1873.

Five years after date we promise to pay to the order of the Franklin Savings Bank, the principal sum of $9,000, with interest at the rate of 9½ per centum per annum, payable semi-annually. Said interest until the maturity hereof being also secured by ten coupons given herewith each for the sum of $427.50, both principal and interest payable at the Fourth National Bank, Chicago, Illinois.

This note and the coupons hereunto annexed bear interest after maturity at the rate of ten per centum per annum and are secured to be paid by a deed of trust bearing even date herewith executed by Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor to Francis S. Howe.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said the Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 10.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1878, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said the Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 9.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said the Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 8.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1877, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 7.

FRANK C. TAYLOR.
MARIA L. TAYLOR,

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, $9,000, five years after the date thereof.

No. 6.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of February, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 5.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $427.50, on the 23d day of August, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 4.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

$427.50. CHICAGO, August 23, 1873.

Due the Franklin Savings Bank, or order, $437.50, on the 23d day of Febry, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, Illinois, being for the interest due that day upon our note of this date for the payment to the order of said The Franklin Savings Bank, of $9,000, five years after the date thereof.

No. 3.

FRANK C. TAYLOR.
MARIA L. TAYLOR.

CHARLES H. MULLIKEN,
*Trustee.*

The last coupon is endorsed: Pay to the Fourth National Bank, Chicago.

G. W. NEWELL,
*Treasurer.*

$2,875. CHICAGO, ILL., January 1, 1874.

Two years after date I promise to pay to the order of the Franklin Savings Bank, of Pawtucket, R. I., the principal sum of $2,875, with interest at the rate of 10 per centum per annum, payable semi-annually. Said interest, until the maturity hereof being also secured by 4 coupons, given herewith, each for the sum of $143.75, both principal and interest payable at the Fourth National Bank of Chicago, Illinois.

This note, and the coupons hereunto annexed, bear interest after maturity at the rate of 10 per centum per annum, and are secured to be paid by trust deed, bearing even date herewith, executed by myself and others, to Francis S. Howe, and is given for an actual loan of money, made on the day of the date hereof.

No. 1. FRANK C. TAYLOR.

$143.75. CHICAGO, January 1, 1874.

Due the Franklin Savings Bank, or order, $143.75, on the 1st day of July, A. D. 1875, without grace, payable at the Fourth National Bank, Chicago, being for the interest due that day upon my note of this date, for the payment to the order of said the Franklin Savings Bank, of $2,875, two years after the date thereof.

No. 3. FRANK C. TAYLOR.

$143.75. CHICAGO, January 1, 1874.

Due the Franklin Savings Bank, or order, on the 1st day of January, A. D. 1876, without grace, payable at the Fourth National Bank, Chicago, Ill., being for the interest due that day upon my note of this date, for the payment, to the order of said The Franklin Savings Bank, of $2,875, two years after the date thereof.

No. 4. FRANK C. TAYLOR.

DEED OF TRUST.

This indenture, made this twenty-third (23rd) day of August, in the year of our Lord one thousand eight hundred and seventy-three (A. D. 1873), between Charles H. Mulliken, trustee; Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook and state of Illinois, parties of the first part, and Francis S. Howe, of the same place, party of the second part, witnesseth: That, whereas, the said parties of the first part have this day executed their certain principal promissory note, bearing even date herewith, for the sum of nine thousand dollars ($9,000), and ten (10) interest coupon notes of same date, for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50) each, all of said notes being payable to the order of the Franklin Savings Bank of Pawtucket, Rhode Island, at the Fourth National Bank of Chicago, the said principal note, five (5) years after the date thereof, and the said coupon notes on the 23rd days of February and August, in the years 1874, 1875, 1876, 1877, and 1878, the said principal and coupon notes bearing interest at the rate of ten (10) per centum per annum after maturity.

And, whereas, the said party of the first part are desirous of securing not only the prompt payment of said principal and coupon notes above mentioned, but also of effectually securing and indemnifying the said Franklin Savings Bank, or its legal representative, for or on account of any assignment, endorsement, guarantee, or transfer of said notes, or any of them. Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, have, and do hereby grant, bargain, sell, and convey unto the said party of the second part, his heirs, assigns, or successor in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as lot one (1), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision in the recorder's office of said Cook county, in book 5 of plats, page 24.

To have and to hold the same, together with all and singular, the privileges and appurtenances thereunto belonging. In trust, nevertheless, that in case of default in the payment of the said principal and coupon notes, or either of them, or any part thereof, according to the true meaning, tenor and effect of the said notes, then on the application of the legal holder of the said notes, or either of them, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successors in trust, either in person or by attorney, to sell and dispose of the said property, or premises therein described, all the right, title, benefit, and equity of redemption of the said party of the

first part, their heirs or assigns therein, at public auction, at one of the doors of the court house, in the city of Chicago, in the county of Cook and state of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time, as may by said party of the second part, his heirs, assigns or successor in trust, be thought expedient by public proclamation or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being expressly waived), and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale, or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions and other expenses of this trust, including all money advanced for insurance, taxes, assessments, or liens of any kind on said premises, with interest thereon at ten per cent. per annum, from the time said money shall be so advanced, to pay the whole of said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part for themselves, their heirs, executors, administrators and assigns do further covenant and agree that they will pay or cause to be paid, all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said notes or either of them remain unpaid, and in case of their neglect to pay said taxes or assessments, when due, it shall and may be lawful for the said party of the second part, or his attorney, or the legal owner or holder of said notes at his option, at any time to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof, which have been or may be sold at any tax sale for taxes or assessments, due or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto be added to the payment which shall next thereafter become due on said notes and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure. And

it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then, and in that case, the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said notes to the time of such sale, shall, at the option (without notice thereof to said party of the first part, their heirs, assigns or legal representatives), of the legal holder or holders of said notes, or either of them, become at once due and payable, and the premises hereby conveyed may be sold in like manner, and with the same effect as if the said indebtedness had fully matured. And it is further agreed by the parties thereto, that on making sale as above provided for, said party of the second part may sell the premises either in parcels or altogether, as he may see fit, that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part, either in person or by his attorney, shall thereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facie evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria L. Taylor, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale or execution or otherwise, and especially under the act entitled "An Act to Exempt Homesteads from Sale on Execution," passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An Act to Amend 'An Act to Exempt Homesteads from Sale on Execution.'" passed by said assembly, A. D. 1857, and approved February 17, A. D. 1857.

And the said parties of the first part for themselves, their heirs, executors and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successors in trust, that at the time of the ensealing and delivery of these premises, they are well seized of said premises in fee simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments and incumbrances whatever (except as herein specified).

And it is further agreed and especially understood, that in case of the death, resignation, removal from the city of Chicago, or inability to act, of said party of the second part, then Edward W. Russell, of the said city of Chicago, shall be, and hereby is appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

And the said party of the first part for their heirs, executors, administrators and assigns, further covenant and agree with the said party of the second part, his heirs, assigns or successor in trust, that until they shall well and truly pay or cause to be paid unto the said the Franklin Savings Bank, its legal representatives or assigns, the aforesaid sum of money, with interest thereon, at the time and in the manner aforesaid, they keep the buildings standing on said premises insured against fire, in a sum not less than four thousand dollars ($4,000) in such insurance company or companies as the said party of the second part, or his successor in trust, shall approve, and the policy or policies and all premium or renewal certificates therefor, immediately thereafter assign and deliver to the said party of the second part, or his successor in trust, for the benefit of said the Franklin Savings Bank or its legal representatives or assigns.

And the said party of the second part, or his successor in trust, or the legal owner or holder of the notes hereby secured, may also at any time insure the building standing on said premises, against fire, in the name of the party of the first part, for the benefit of, and loss, if any, payable to the said the Franklin Savings Bank or its legal representatives, or to the legal owner or holder of the said notes and the premium or premiums paid therefor shall be added to the next instalment of interest or principal due on said notes and shall bear interest at the rate of ten per cent. per annum, and shall also constitute an additional indebtedness, for which the within mentioned security is given. In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

FRANK C. TAYLOR. [L. S.]

MARIA L. TAYLOR, [L. S.]

CHARLES H. MULLIKEN, [L. S.]

*Trustee.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Rufus C. Hall, a notary public, in and for and residing in said county, in the state aforesaid, do hereby certify that Frank C. Taylor and Maria L. Taylor, his wife, and Charles H. Mulliken, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before this day in person, and acknowledged that they signed, sealed and delivered the same instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws" so called of the state of Illinois.

And the said Maria L. Taylor, wife of the said Frank C. Taylor, being above the age of eighteen years, having been by me examined, separate and apart, and out of the hearing of her husband and the contents and meaning of the said deed, and also her rights and benefits under the "Homestead Exemption Laws," so called of the state of Illinois, having been by me made known and fully explained to her acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all her right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy-three (A. D. 1873.)

RUFUS C. HALL,
*Notary Public.*

[NOTARIAL SEAL.]

[ENDORSED]: No. 122,191. Filed for record in the recorder's office of Cook county, Illinois, this 25th day of August, A. D. 1873, and recorded in book of records 303, page 227, August 29, A. D. 1873.

JAS. STUART,
*Recorder.*

## Deed of Trust.

This indenture, made this twenty-third (23d) day of August, in the year of our Lord, one thousand, eight hundred and seventy-three (A. D. 1873), between Chas H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook and state of Illinois, parties of the first part, and Francis S. Howe, of the same place, party of the second part.

Witnesseth, that whereas, the said parties of the first part have this day executed their certain principal promissory note, bearing even date herewith, for the sum of nine thousand dollars ($9,000) and ten (10) interest coupon notes of same date, for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50) each, all of said notes being payable to the order of the Franklin Savings Bank, of Pawtucket, at the Fourth National Bank, of Chicago, the said principal note five (5) years after the date thereof and the said coupon notes on the twenty-third days of February and August, in the years 1874, 1875, 1876, 1877 and 1878, the said principal and coupon notes bearing interest at the rate of ten (10) per centum per annum after maturity.

And whereas, the said party of the first part are desirous of securing not only the prompt payment of said principal and coupon notes above mentioned, but also of effectually securing and indemnifying the said, the Franklin Savings Bank or its legal representative, for or on account of any assignment, endorsement, guarantee or transfer of said notes, or any of them.

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt thereof is hereby confessed and acknowledged, have and do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs, assigns or successor in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as lot two (2), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision, in the recorder's office of said Cook county, in book 5 of plats, page 24.

To have and to hold the same, together with all and singular, the privileges and appurtenances thereunto belonging, in trust nevertheless, that in case of default in the payment of the said principal and coupon notes, or either of them or any part thereof, according to the true meaning, tenor and effect of the said notes, then on the application of the legal holder of the said notes, or either of them it shall, and may be lawful for the said party of the second part, his heirs, assigns or successors in trust, either in person or by attorney, to sell and dispose of the said property or premises herein described,

and all the right, title, benefit and equity of redemption of the said party of the first part, their heirs or assigns, therein, at public auction, at one of the doors of the court house, in the city of Chicago, in the county of Cook and state of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time, as may by said party of the second part his heirs, assigns, or successor in trust, be thought expedient, by public proclamation or otherwise, (personal notice to said party of the first part of such sale, or adjournment of sale being hereby expressly waived,) and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale, or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions and other expenses of this trust, including all money advanced for insurance, taxes, assessments or liens of any kind on said premises, with interest thereon at ten per cent. per annum, from the time said money shall be so advanced, to pay the whole of said principal money and accrued interest thereof that shall at the time of sale remain unpaid, whether due or not due, rendering the overplus (if any) unto the said party of the first part, legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part for themselves, their heirs, executors, administrators and assigns do further covenant and agree, that they will pay, or cause to be paid all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said notes or either of them remain unpaid, and in case of their neglect to pay said taxes or assessments, when due, it shall and may be lawful for the said party of the second part, or his attorney or the legal owner or holder of said notes at his option, at any time to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof, which have been or may be sold at any tax sale for taxes, or assessments due or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto be added to the payment, which shall next thereafter become due on said notes, and shall also constitute an additional indebted-

ness from the said party of the first part, which this deed is given to secure. And it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then, and in that case, the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said notes to the time of such sale, shall, at the option (without notice thereof to said party of the first part, their heirs, assigns, or legal representatives,) of the legal holder or holders of said notes or either of them become at once due and payable, and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured. And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises either in parcels or altogether, as he may see fit, that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part, either in person or by his attorney, shall thereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facie evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria L. Taylor party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An Act to Exempt Homesteads from sale on Execution," passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An Act to Amend 'An Act to Exempt Homesteads from sale on Execution,'" passed by said assembly, A. D. 1857, and approved February 17, A. D. 1857.

And the said parties of the first part for themselves, their heirs, executors and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successors in trust, and at the time of the ensealing and delivery of these presents, they are well seized of said premises in fee simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments and incumbrances whatever, (except as herein specified.)

And it is further agreed and especially understood, that in case of the death, resignation, removal from the city of Chicago, or inability to act, of said party of the second part, then Edward W.

Russell of Chicago, shall be, and hereby is appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

And the said party of the first part for their heirs, executors, administrators and assigns, further covenant and agree with the said party of the second part, his heirs, assigns or successor in trust, that until they shall well and truly pay or cause to be paid unto the said the Franklin Savings Bank, its legal representatives or assigns, the aforesaid sum of money, with interest thereon, at the time and in the manner aforesaid, they will keep the buildings standing on said premises insured against fire, in a sum not less than four thousand dollars ($4,000), in such insurance company or companies as the said party of the second part, or his successor in trust, shall approve, and the policy or policies and all premium or renewal certificates therefor, immediately thereafter assign and deliver to the said party of the second part, or his successor in trust, for the benefit of said the Franklin Savings Bank or its legal representatives or assigns.

And the said party of the second part, or his successor in trust, or the legal owner or holder of the notes hereby secured, may also at any time insure the building standing on said premises, against fire, in the name of the party of the first part, for the benefit of, and loss, if any, payable to the said the Franklin Savings Bank or its legal representatives, or to the legal owner or holder of the said notes, and the premium or premiums paid therefor shall be added to the next installment of interest or principal due on said notes, and shall bear interest at the rate of ten per cent. per annum, and shall also constitute an additional indebtedness, for which the within mentioned security is given. In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

FRANK C. TAYLOR. [L. S.]
MARIA L. TAYLOR. [L. S.]

CHARLES H. MULLIKEN, [L. S.]
*Trustee*.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, Rufus C. Hall, a notary public, in and for and residing in said county, in the state aforesaid, do hereby certify that Frank C. Taylor and Maria L. Taylor, his wife, and Charles H. Mulliken, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the same instrument in writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws" so called of the state of Illinois.

And the said Maria L. Taylor, wife of the said Frank C. Taylor, being above the age of eighteen years, having been by me examined, separate and apart, and out of the hearing of her husband and the contents and meaning of the said deed, and also her rights and benefits under the "Homestead Exemption Laws," so called of the state of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois, without the compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and notarial seal, this 23d day of August, in the year of our Lord, one thousand eight hundred and seventy-three, (A. D. 1873.)

[NOTARIAL SEAL.] RUFUS C. HALL,
*Notary Public.*

[Endorsed]: No. 122,190. Filed for record in the recorder's office of Cook county, Illinois, this 25th day of Aug., A. D. 1873, and recorded in book 306 of records, page 207, Aug. 27, 1873.

JAS. STUART,
*Recorder.*

## Deed of Trust.

This indenture, made this twenty-third (23d) day of August, in the year of our Lord, one thousand eight hundred and seventy-three (A. D. 1873), between Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, county of Cook, and state of Illinois, parties of the first part, and Francis S. Howe, of the same place, party of the second part, witnesseth:

That whereas, the said parties of the first part have this day executed their certain principal promissory note bearing even date herewith, for the sum of nine thousand dollars ($9,000) and ten interest coupon notes of same date, for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50) each, all of said notes being payable to the order of the Franklin Savings Bank, of Pawtucket, Rhode Island, at the Fourth National Bank of Chicago, the said principal note five (5) years after the date thereof and the said coupon notes on the 23d days of February and August, in the years 1874, 1875, 1876, 1877 and 1878, the said principal and coupon notes bearing interest at the rate of ten (10) per centum per annum after maturity.

And whereas, the said party of the first part are desirous of securing not only the prompt payment of said principal and coupon notes above mentioned, but also of effectually securing and indemnifying the said the Franklin Savings Bank or its legal representative for or on account of any assignment, endorsement, guarantee or transfer of said notes or any of them.

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, have and do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs, assigns or successors in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as lot four (4), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago as shown by the plat of said subdivision in the recorder's office of said Cook county in book 5 of plats, page 24. To have and to hold the same, together with all and singular, the privileges and appurtenances thereto belonging, in trust nevertheless, that in case of default in the payment of the said principal and coupon notes or either of them or any part thereof according to the true meaning, tenor and effect. If the said notes then, on the application of the legal holder of the said notes, or either of them, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successor in trust, either in person or by attorney, to sell and dispose of the said property or premises herein described, and all the right, title, benefit and equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at one

of the doors of the court house, in the city of Chicago, in the county of Cook and state of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time as may by said party of the second part, his heirs, assigns, or successor in trust, be thought expedient by public proclamation or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived), and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions and other expenses of this trust, including all money advanced for insurance, taxes, assessments or liens of any kind on said premises, with interest thereon at ten per cent. per annum, from the time the said money shall be so advanced, to pay the whole of said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due, rendering the over-plus (if any), unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs, and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part for themselves, their heirs, executors, administrators and assigns, do further covenant and agree that they will pay or cause to be paid all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said notes or either of them remains unpaid, and in case of their neglect to pay said taxes or assessments when due, it shall and may be lawful for the said party of the second part or his attorney or the legal owner or holder of said notes at his option, at any time to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof which have been or may be sold at any tax sale for any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto, be added to the payment which shall next thereafter become due on said notes and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then and in that case, the whole principal sum hereby secured and the interest thereon, according to the tenor and effect of said notes to the time of such sale, shall at the option (without notice thereof to said party of the first part, their heirs, assigns or legal representatives) of the legal holder or holders of said notes or either of them become at once due and payable, and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured.

And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises either in parcels or altogether as he may see fit, that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part either in person or by his attorney, shall hereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facie evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria L. Taylor, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under and by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An Act to Exempt Homesteads from sale on Execution," passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, 1851, and act entitled "An Act to Amend, 'An Act to Exempt Homesteads from sale on Execution,'" passed by said assembly, A. D. 1857, and approved February 17, A. D. 1857.

And the said parties of the first part, for themselves and heirs, executors and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successor in trust, that at the time of the ensealing and delivery of these presents, they are well seized of said premises in fee simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments and incumbrances whatever, (except as herein specified.)

And it is further agreed, and especially understood that in case of the death, resignation, removal from the said city of Chicago, or inability to act, of said party of the second part, then Edward W. Russell, of the city of Chicago, shall be, and hereby is appointed and made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become

vested in such new trust accordingly. And the said party of the first part, for their heirs, executors, administrators and assigns, further covenant and agree with the said party of the second part, his heirs, assigns or successor in trust, that until they shall well and truly pay, or cause to be paid unto the said the Franklin Savings Bank, its legal representatives or assigns, the aforesaid sum of money, with interest thereon, at the times and in the manner aforesaid, they will keep the buildings standing on said premises insured against fire in a sum not less than four thousand dollars ($4,000), in such insurance company or companies as the said party of the second part, or his successor in trust shall approve, and the policy or policies and all premiums or renewal certificates therefor, immediately thereafter, assign and deliver to the said party of the second part, or his successors in trust, for the benefit of said the Franklin Savings Bank, or its legal representatives or assigns. And the said party of the second part, or his successor in trust, or the legal owner or holder of the notes hereby secured, may also at any time insure the buildings standing on said premises against fire in the name of the party of the first part, for the benefit of, and loss, if any, payable to the said the Franklin Savings Bank or its legal representatives, or to the legal owner or holder of the said notes, and the premium or premiums paid therefor shall be added to the next installment of interest or principal due on said notes, and shall bear interest at the rate of ten per cent. per annum, and shall also constitute an additional indebtedness, for which the within mentioned security is given.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

FRANK C. TAYLOR. [L. S.]

MARIA L. TAYLOR. [L. S.]

CHARLES H. MULLIKEN, [L. S.]
*Trustee.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Rufus C. Hall, a notary public, in and for and residing in said county, in the state aforesaid, do hereby certify that Frank C. Taylor and Maria L. Taylor, his wife, and Charles H. Mulliken, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the same instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantages and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois.

And the said Maria L. Taylor, wife of the said Frank C. Taylor, being above the age of eighteen years, having been by me examined, separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed and also her rights and benefits under the "Homestead Exemption Laws," so called of the state of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 23d day of August, in the year of our Lord, one thousand eight hundred and seventy-three (A. D. 18$\frac{7}{3}$).

[NOTARIAL SEAL.]

RUFUS C. HALL,
*Notary Public.*

[Endorsed]: No. 122,193. Filed for record in the recorder's office of Cook county, Illinois, this 25th day of August, A. D. 1873, and recorded in book 242 of records, page 614, September 1, 1873.

JAS. STEWART,
*Recorder.*

## Deed of Trust.

This indenture, made this twenty-third (23d) day of August, in the year of our Lord, one thousand, eight hundred and seventy-three (A. D. 1873), between Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, in the county of Cook and state of Illinois, parties of the first part, and Francis S. Howe, of the same place, party of the second part, witnesseth:

That whereas, the said parties of the first part have this day executed their certain principal promissory note bearing even date herewith for the sum of nine thousand dollars ($9,000), and ten interest coupon notes of same date for the sum of four hundred and twenty-seven dollars and fifty cents ($427.50) each, all of said notes being payable to the order of the Franklin Savings Bank, of Pawtucket, Rhode Island, at the Fourth National Bank of Chicago, the said principal note five (5) years after the date thereof, and the said coupon notes on the 23d days of February and August, in the years 1874, 1875, 1876, 1877 and 1878, the said principal and coupon notes bearing interest at the rate of ten (10) per centum per annum after maturity.

And whereas, the said party of the first part are desirous of securing not only the prompt payment of said principal and coupon notes above mentioned, but also of effectually securing and indemnifying the said the Franklin Savings Bank or its legal representatives for or on account of any assignment, endorsement, guarantee or transfer of said notes, or any of them.

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, have and do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs, assigns or successor in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as lot five (5), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision, in the recorder's office of said Cook county, in book 5 of plats, page 24. To have and to hold the same, together with all and singular, the privileges and appurtenances thereto belonging, in trust nevertheless, that in case of default in the payment of the said principal and coupon notes, or either of them, or any part thereof, according to the true meaning, tenor and effect, if the said notes then, on the application of the legal holder of the said notes, or either of them, it shall and may be lawful for the said party of the second part, his heirs, assigns or successor in trust, either in person, or by attorney, to sell and dispose

of the said property or premises herein described, and all the right, title, benefit and equity of redemption of the said party of the first part, their heirs or assigns, therein, at public auction, at one of the doors of the court house, in the city of Chicago, in the county of Cook and state of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time as may by said party of the second part, his heirs, assigns, or successor in trust, be thought expedient by public proclamation or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived), and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale or adjourned sale, good and sufficient deed or deeds of conveyance of the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions and other expenses of this trust, including all money advanced for insurance, taxes, assessments or liens of any kind on said premises, with interest thereon at ten per cent per annum, from the time said money shall be so advanced, to pay the whole of said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due, rendering the over-plus (if any), unto the said party of the first part, their legal representatives or assigns, on reasonable request and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of this first part, their and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part for themselves, their heirs, executors, administrators and assigns, do further covenant and agree that they will pay or cause to be paid all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said notes or either of them remain unpaid, and in case of their neglect to pay said taxes or assessments when due, it shall and may be lawful for the said party of the second part, or his attorney or the legal owner or holder of said notes at his option, at any time to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof which have been or may be sold at any tax sale for taxes or assessments due, or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto, be added to the payment which shall next thereafter become due on said

notes, and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure.

And it is stipulated and agreed, that in case of default in any of said payments of principal and interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then, and in that case, the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said notes to the time of such sale, shall at the option (without notice thereof to said party of the first part, their heirs, assigns or legal representatives), of the legal holder or holders of said notes, or either of them become at once due and payable; and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured.

And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises either in parcel or altogether as he may see fit, that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part either in person or by his attorney, shall hereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facie evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria L. Taylor, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under and by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads for sale on execution or otherwise, and especially under the act entitled "An Act to Exempt Homesteads from sale on execution," passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An Act to Amend 'An Act to Exempt Homesteads from sale on execution,'" passed by said assembly, A.D. 1857, and approved February 17, A. D. 1857.

And the said parties of the first part for themselves, their heirs, executors and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successor in trust, that at the time of the ensealing and delivery of these presents, they are well seized of said premises in fee simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments and incumbrances whatever (except as herein specified.)

And it is further agreed, and especially understood that in case of the death, resignation, removal from the said city of Chicago, or inability to act, of said party of the second part, then Edward W. Russell, of the said city of Chicago, shall be and hereby is appointed and

made the successor in trust herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

And the said party of the first part for their heirs, executors, administrators and assigns, further covenant and agree with the said party of the second part, his heirs, assigns, or successor in trust, that until they shall well and truly pay, or cause to be paid unto the said the Franklin Savings Bank its legal representatives or assigns, the aforesaid sum of money, with interest thereon, at the times and in the manner aforesaid, they will keep the buildings standing on said premises insured against fire in a sum not less than four thousand dollars ($4,000), in such insurance company or companies as the said party of the second part, or his successor in trust shall approve, the policy or policies and all premium or renewal certificates therefor, immediately thereafter assign and deliver to the said party of the second part, or his successor in trust, for the benefit of said the Franklin Savings Bank, or its legal representatives or assigns.

And the said party of the second part, or his successor in trust, or the legal owner or holder of the notes hereby secured, may also at any time insure the buildings standing on said premises against fire in the name of the party of the first part, for the benefit of, and loss, if any, payable to the said the Franklin Savings Bank or its legal representatives, or to the legal owner or holder of the said notes and the premium or premiums paid therefor shall be added to the next installment of interest or principal due on said notes and shall bear interest at the rate of ten per cent. per annum, and shall also constitute an additional indebtedness, for which the within mentioned security is given.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

FRANK C. TAYLOR. [L. S.]

MARIA L. TAYLOR. [L. S.]

CHARLES H. MULLIKEN, [L. S.]
*Trustee.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Rufus C. Hall, a notary public, in and for and residing in said county, in the state aforesaid, do hereby certify that said Frank C. Taylor and Maria L. Taylor, his wife, and Charles H. Mulliken, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the same instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all "Homestead Exemption Laws," so called, of the state of Illinois.

And the said Maria L. Taylor, wife of the said Frank C. Taylor, being above the age of eighteen years, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed, and also her right and benefits under the "Homestead Exemption Laws," so called, of the state of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all right, title, and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any, and all "Homestead Exemption Laws," so called, of the state of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 23d day of August, in the year of our Lord, A. D. 1873.

RUFUS C. HALL,
*Notary Public.*

[NOTARIAL SEAL]

[Endorsed]: Filed for record in the recorder's office of Cook county, Illinois, this 25th day of August, A. D. 1873, and recorded in book 242 of records, page 609, August 30, 1873.

JAS. STEWART,
*Recorder.*

## Deed of Trust.

This indenture, made this 1st day of January, in the year of our Lord one thousand eight hundred and seventy-four (A. D. 1874), between Charles H. Mulliken, trustee, and Frank C. Taylor and Maria L. Taylor, his wife, of the city of Chicago, Cook county, Illinois, parties of the first part, and Francis S. Howe, of said city, in the county and state aforesaid, party of the second part, witnesseth:

That, whereas, the said Frank C. Taylor has executed his certain promissory note of even date herewith, for the sum of two thousand eight hundred and seventy-five dollars ($2,875), payable to the order of the Franklin Savings Bank of Pawtucket, Rhode Island, two years after said date, at the Fourth National Bank of Chicago, the interest on said note, until the maturity thereof, at the rate of ten (10) per cent. per annum, being secured to be paid semi-annually, on the first day of the months of January and July, in each year, by four (4) coupons attached thereto, each for the sum of one hundred and forty-three dollars and seventy-five cents ($143.75.) The said note, and the coupons thereunto attached, to continue to carry interest after maturity, at the rate of ten (10) per cent. per annum. And, whereas, the said party of the first part are desirous of securing, not only the prompt payment of said promissory note above mentioned, but also of effectually securing and indemnifying the Franklin Savings Bank, or its legal representative, for or on account of any assignment, endorsement, guarantee or transfer of said promissory note. Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, has, and do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs, assigns or successors in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as lots one (1), two (2), four (4) and five (5), in the subdivision of lot (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision in the recorder's office of said Cook county in book 5 of plats, page 24. To have and to hold the same, together with all and singular, the privileges and appurtenances thereto belonging. In trust nevertheless, that in case of default in the payment of the said principal and coupon notes or either of them, or any part thereof, according to the true meaning, tenor and effect of the said promissory note; then on the application of the legal holder of the said promissory note, it shall and may be lawful for the said party of the second part, his heirs, assigns or successor in trust, either in person or by attorney, to sell and dispose of the said property or premises herein described, and all the right, title, benefit and equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at one of the

doors of the court house, in the city of Chicago, in the county of Cook, and state of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time as may by said party of the second part, his heirs, assigns, or successor in trust, be thought expedient by public proclamation or otherwise, (personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived), and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertisng and sale, commissions and other expenses of this trust, including all money advanced for insurance, taxes, assessments or liens of any kind on said premises, with interest thereon at ten per cent. per annum, from the time said money shall be so advanced, to pay the whole of said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due, rendering the overplus (if any), unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part, for themselves, their heirs, executors, administrators and assigns, do further covenant and agree that they will pay or cause to be paid all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said promissory note remains unpaid, and in case of their neglect to pay said taxes or assessments, when due, it shall and may be lawful for the said party of the second part, or his attorney, or the legal holder of said promissory note, at his option, at any time to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof which have been or may be sold at any tax sale for taxes and assessments due or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as he may deem advisable, without notice to the said party of the first part, and the amount of money so paid shall, with interest at the rate of ten per cent. per annum in addition thereto, be added to the payment, which shall next thereafter become due on said promissory note, and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest, as aforesaid, or of a breach in any of the covenants or agreements herein contained, then and in that case, the whole principal sum hereby secured and the interest thereon, according to the tenor and effect of said promissory note to the time of such sale, shall at the option (without notice thereof to said party of the first part, their heirs, assigns or legal representatives) of the legal holder or holders of said note at once due and payable, and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured.

And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises either in parcels or altogether as he may see fit, that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part either in person or by his attorney, shall hereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facie evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria L. Taylor, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under and by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "'An act to exempt homesteads from sale on execution,'" passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, A. D. 1851; and an act entitled, "An act to amend 'an act to exempt homesteads from sale on execution,'" passed by said assembly, A. D. 1857, and approved February 17, A. D. 1857.

And the said Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, for themselves, their heirs, executors, and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successor in trust, that at the time of the ensealing and delivery of these presents, they are well seized of said premises in fee simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and form aforesaid, and that the same are free and clear from all liens, taxes, assessments and incumbrances whatever (exempt as herein specified),

And it is further agreed, and especially understood that in case of the death, resignation, removal from the said city of Chicago, or inability to act, of said party of the second part, then Edward W Russell of the said city of Chicago, shall be and hereby is appointed and made the successor in trust herein with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly

And the said party of the first part for themselves, their heirs, executors, administrators and assings, further covenant and agree with the said party of the second part, his heirs, assigns or successors in trust, that until they shall well and truly pay, or cause to be paid unto the said the Franklin Savings Bank its legal representatives or assigns, the aforesaid sum of money, with interest thereon, at the times and in the manner aforesaid, they will keep the buildings standing on said premises insured against fire in a sum not less than $2,875, in such insurance company or companies as the said party of the second part, or his successor in trust shall approve, and the policy or policies and all premium or renewal certificates therefor, immediately thereafter assign and deliver to the said party of the second part, or his successor in trust, for the benefit of said Franklin Savings Bank, or its legal representatives or assigns. And the said party of the second part, or his successor in trust, or the legal owner or holder of the note hereby secured, may also at any time insure the buildings standing on said premises against fire, in the name of the party of the first part, for the benefit of and loss, if any, payable to the said Franklin Savings Bank or its legal representatives, or to the legal owner or holder of the said promissory note and the premium or premiums paid therefor shall be added to the next instalment of interest or principal due on said note and shall bear interest at the rate of ten per cent. per annum and shall also constitute an additional indebtedness for which the within mentioned security is given

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES H. MULLIKEN, Trustee [L. S.]
FRANK C. TAYLOR [L. S.]
MARIA L. TAYLOR. [L. S.]

STATE OF ILLINOIS,
COUNTY OF COOK,
CITY OF CHICAGO, } ss.

I, Lucius Hoyt, a notary public, in and for and residing in said city of Chicago, in said county, in the state aforesaid, do hereby certify that Charles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person acknowledged that they signed, sealed and delivered the same instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois.

Given under my hand and notarial seal, this eighth day of January, in the year of our Lord, one thousand eight hundred and seventy-four.

[NOTARIAL SEAL.]

LUCIUS HOYT,
*Notary Public.*

[Endorsed]: State of Illinois, Cook county, ss. No. 144,354. Filed for record January 8, A. D. 1874, at — o'clock — M., and recorded January 13, 1874, in book 338 of records, page 159.

JAS. STEUART,
*Recorder.*

It is hereby stipulated that an abstract of title of lot four, in block sixteen, in Bushnell's addition to Chicago, here produced, shows all that was shown by any abstract books saved from the great fire in Chicago, October 8 and 9, 1871, in reference to a certain deed in trust from Maria L. Taylor and husband to Ira Scott, dated June 13, 1871, and recorded June 15, 1871, and being the same trust deed introduced in evidence as complainant's "Exhibit No. 1," and that such is in words and figures following, to-wit:

Maria L. Taylor and husband
*to*
Ira Scott

Deed in trust, dated June 13, 1871, and recorded June 15, 1871, in book 673, page 1. Consideration $1.00. Conveyed lot four, in block sixteen, in Bushnell's addition to Chicago, (referring to book 165 of maps, page 51.)

JUNE 7, 1889.

Examination resumed pursuant to agreement.

Counsel present as before.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 30," a certified copy of master's certificate, issued by Henry W. Bishop, as master in chancery, to the Franklin Savings Bank of Pawtucket, Rhode Island, dated June 16, 1880, and the assignment thereon by that bank to Orville Peckham, dated July 20, 1880, and the assignment thereon by Orville Peckham to Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, dated April 26, 1881, which is as follows:

## Master's Certificate.

United States of America,
Northern Disrict of Illinois.

In the Circuit Court of the United States, for the Northern District of Illinois.

In Chancery.

The Franklin Savings Bank, of Pawtucket, Rhode Island,

*vs.*

Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor, Robert E. Taylor, Charles H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar, as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska.

I, Henry W. Bishop, master in chancery of the Circuit court of the United States, for the Northern district of Illinois, do hereby certify that in pursuance of a decree entered on the 29th day of April, A. D. 1880, by the said court in the above entitled cause, I duly ad-

vertised, according to law, the premises hereinafter described, to be sold at public auction, to the highest and best bidder for cash in hand, at the hour of 11 o'clock in the forenoon, on Wednesday the 16th day of June, A. D. 1880, at the front door upon LaSalle street of the building in which this court was formerly held in the city of Chicago, Cook county, Illinois.

That at the time and place so as aforesaid appointed for said sale, I attended to make the same, and offered and exposed said premises for sale at public auction, to the highest and best bidder, for cash in hand. Whereupon the Franklin Savings Bank, of Pawtucket, Rhode Island, offered and bid therefor the sum of twelve thousand dollars ($12,000), and that being the highest and best bid therefor, I accordingly struck off and sold to said bidder the Franklin Savings Bank, of Pawtucket, Rhode Island, for said sum of money, the said premises, which are situated in the city of Chicago, county of Cook and state of Illinois, and are described as follows, to-wit: Lot 2, in the subdivision of lot 4, in block 16, Bushnell's addition to Chicago, county of Cook and state of Illinois, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan were petitioners and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, The Franklin Savings Bank, Francis S. Howe. Charles H. Mulliken and George Taylor were defendants.

And I do further certify that the said Franklin Savings Bank, of Pawtucket, Rhode Island, its successors, legal representatives or assigns, will be entitled to a deed of said premises on the 17th day of September, A. D. 1881, unless the same shall be redeemed according to law.

Witness my hand and seal, this 16th day of June, A. D. 1880.

HENRY W. BISHOP. [SEAL.]

*Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois.*

Endorsed on the back thereof are the following:

"Henry W. Bishop, master in chancery, to Franklin Savings Bank, of Pawtucket, Rhode Island, master's certificate."

"The real estate within described has not been redeemed through this office.

CHICAGO, Nov. 2, 1881.

WM. H. BRADLEY, *Clerk.*

ROOT, Asst.

Received master's deed of conveyance of the within premises."

GEORGE DAWSON.

For PECKHAM & BROWN.

"For value received the Franklin Savings Bank hereby assigns the within certificate to Orville Peckham without recourse."

July 20 1880.

FRANKLIN SAVINGS BANK,

By H. H. THOMAS,
*President.*

"For value received I, Orville Peckham, hereby assign the within certificate to Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor."

ORVILLE PECKHAM.

April 26, 1881.

EDWARD O. BROWN, being first duly sworn, testified on behalf of defendant, as follows:

*Direct Examination by Mr. Swift.*

Q. Mr. Brown, you are a member of this bar, practicing law in this city?

A. Yes, sir.

Q. And you were in the year 1876, and have been subsequent to that time continuously?

A. Yes.

Q. What has been your firm during that time?

A. Peckham & Brown, composed of Orville Peckham and myself until September, 1887, I think, and since that time composed of Orville Peckham, myself and Thomas H. Pease.

Q. Do you remember, Mr. Brown, the foreclosure suit in the United States Circuit court, of the Franklin Savings Bank, of Pawtucket, Rhode Island, against Frank C. Taylor, *et al.*, commenced sometime about 1876.

A. I do.

Q. Did your partner, Mr Peckham, act at any time as guardian *ad litem* for the minor defendants in that suit, and you as his attorney?

A. Yes; he did.

Q. Will you state, if you please, the facts connected with that litigation and its settlement? Of course you need not state what appears of record, except as it may come in incidentally; the record evidence is already in.

A. All that I know—all my connection with the litigation?

Q. Well, state it pretty fully.

By Mr. KENDALL: I enter an objection to this; I don't know what bearing on this case the connection of Mr. Brown can have.

A. I do not remember the exact date, even to the month, when I first knew anything about this suit, but at sometime subsequent to October 20, 1876, when an answer was filed in the case by Mr. Asay, and sometime before July, 1877, Frank C. Taylor came to me and asked me if I would act as solicitor for Mrs. Taylor's and the children's interests represented by the trustee; I think, in a foreclosure suit which was pending against the property upon which he lived. I consented to do so; Mr. Asay was going to withdraw from the case, I believe, and I attended, representing, I think, Mrs. Taylor—representing the trustee, Charles H. Mulliken, and the children: at any rate, at the taking of some testimony in the United States court.

Q. When you say the children, you mean the guardian *ad litem*.

A. Mr. Peckham had not been appointed; William H. Bradley was guardian *ad litem*, and I don't think he ever said anything to me about representing him at all.

Q. That was before the appointment of—

A. Before the appointment of Mr Peckham. I suppose I couldn't have represented the children at all, I represented C. H. Mulliken, who represented the trust estate I am not at all clear about that exactly, for whom my appearance was entered, but at all events, I think about June, 1877, Mr. Frank Taylor brought to me a trust deed which was a deed from himself and wife to Ira Scott, trustee of the property in controversy, made before the great fire of 1871, and acknowledged and recorded before that fire, and said that the deed had been recently discovered, and that it had previously been supposed to be lost, as of course, I knew, there having been proceedings in the courts to restore the deed. The deed, which I satisfied myself was the original deed, is different, very materially, from the restored deed, and very much modified the children's rights, as I thought, in the litigation; it gave them a very different interest in the property, as it had a clause affecting the rights of the trustee to mortgage or encumber the property. When that was shown to me by Mr. Taylor I told him that it altered the status of things, the condition of the litigation and prospects of the litigation very much, and that I thought the children's interests were perhaps diverse from Mrs. Taylor's, and necessarily from Mr. Mulliken's, and that I thought the proper person to be notified was the guardian *ad litem* appointed by the United States Circuit court in the litigation. He entrusted me with the deed, and I went to Mr. Bradley with it. I first went to Mr. Bishop with it, and asked him to introduce me to Mr. Bradley, and we went to Mr. Bradley and I showed him the deed and explained to him how I conceived it altered the rights of the children of Frank Taylor, and that it was an important matter, and my recollection is that he expressed a disposition to consult Judge Blodgett about it. Shortly after that he told me that he thought it was very important that the children's rights should be vigorously asserted, and that his position as clerk of the court was such that he did not think he ought to be so active a participant in litigation, and recommended that somebody else be appointed guardian *ad litem*. After some discussion among various parties as to who it should be, it was agreed that Mr. Peckham—an application should be made for the appointment of Mr. Peckham as guardian *ad litem*, and when that was done I told Frank Taylor that I should represent Mr. Peckham as guardian *ad litem*, or represent the children, under the employment of Mr. Peckham as guardian *ad litem*, and I did not think I could represent Mrs. Taylor, and that I could not represent him or any of the other parties in the litigation, from that time on Mr. Peckham was appointed guardian *ad litem* upon the 7th day of July, 1877, and from that time on, to the end of the litigation, I represented the chil-

dren under his direction and instruction and employment, and nobody else.

Q. You filed an answer for the guardian *ad litem*, did you?

A. I did; filed afterwards, amended answers on the birth of other children; as I remember it. Amended answers, after certain proceedings in the State courts, in which decrees on bills of review were rendered. I filed for the guardian *ad litem*, as I remember it, immediately, some answers for the children, but I was anxious to get certain decrees in the State courts restoring the original trust deed as alleged, reviewed and set aside.

Q. Let me interrupt you, Mr. Brown, right there; evidence has already been introduced showing that bills of review were filed in the State court in two certain chancery suits, and those proceedings were conducted by you?

A. Those proceedings were conducted by me, the object being to allow the introduction of evidence in the foreclosure proceedings in the United States court, which I feared might be shut out so long as these decrees were unreserved in the State courts. And after those decrees on the bills of review were entered, I filed other amended answers, or supplemental answers for the children, setting up the fact that those decrees had been reviewed; that is the way I amended. And afterward, I filed certain amended answers on the birth of some after-born children, and after that there were amended and supplemental bills filed by the complainant, as I remember it, to which I filed formal answer.

Q. Then come down, if you please, right to the final disposition of the matter.

A. The final disposition of the matter was this: Some negotiations were entered into for a settlement—

By Mr. KENDALL: I want, your Honor, to enter an objection to the testimony of the witness in regard to the answers and other pleadings in that foreclosure suit, because, I presume, the pleading themselves, and the record, are accessible, and if so, that is the proper evidence. I presume there were answers filed, but—

By Mr. SWIFT: It is mere narrative.

By Mr. KENDDALL: I don't want to be bound by the statements of the witness that answers were filed, if, as a matter of fact, anything was omitted of that sort.

By the MASTER: The answer of the witness may stand, but of course, if it is desired to show the contents of answers or other documents, they must be produced, or their absence accounted for.

(Continuation of answer.) Some conversation of a very indefinite character had taken place between Mr. Swift and myself, and Mr. Thomas, president of the Franklin Savings Bank, as I understood it, came to see me. He had seen Frank Taylor, the father of the children and had some conversation with him, and he came to see me.

By Mr. KENDALL. You mean he said he had seen Frank C. Taylor?

A. I mean to say I have some letters and notes from Frank Tay-

lor, alluding to having seen Mr. Thomas, and Mr. Thomas having come to see me. And I had some conversation with him; I can't remember how many times, or how definite it was, and it resulted finally, in my being referred to Mr. Swift, and Mr. Swift made a proposition of settlement to me as solicitor for the guardian *ad litem*. I submitted that to Mr. Peckham, and consulted with him about it, and it was concluded that before it was accepted, although we both believed it to be for the advantage of the children to accept, we should submit it to Mr. Frank C. Taylor, and tell him that we didn't want to make any settlement like that without his approbation, since he was the father and natural guardian of the children, although Mr. Peckham had the responsibillity of deciding; and I had some correspondence with Mr. Taylor, in consequence of which I went to Mr. Swift and told him that the proposition as made—

Q. You communicated that proposition to Mr. Taylor in writing?

A. I did.

Q. Have you a letter-press copy of that letter you sent to Mr. Taylor?

A. I have.

Q. Will you read it, if you please.

July 29.

FRANK C. TAYLOR, ESQ.

*My Dear Frank:* The attorneys for the Franklin Savings Bank, have, after correspondence and consultation with their client, made a formal proposition to Mr. Peckham and myself as the representatives of your children in the pending cause of *The Franklin Savings Bank* vs. *Taylor, et al.*, which they announce is the ultimate decision of their client and the utmost concession they will make, it as follows:

From the money in Mr. Harvey's hands, which amounts to (the taxes and insurance being all paid up), $500 is to be devoted to settling the suit now pending of Grant & Price for a mechanics' lien, the proportionate amount of the remainder, which would appertain to one of the houses other than the corner one is to be given to us for the benefit of the trust estate, and then, on approval by the court (which both Grant & Swift and ourselves think it will be possible to get), a decree is to be entered by the court which shall vest in the trust estate any one of the houses we may select other than the corner one, and order the others sold for the benefit of the complainant, it to get a good title to them in itself. The bank is also to release and discharge the house given to us from any claim under the Gilsdorff mechanics' lien, an assignment and the ownership and control of which it holds.

This proposition has been very carefully considered by Mr. Peckham (as guardian *ad litem*) and by myself in the light of the following considerations:

First: there is at present against all the property, as good against the children's interest as against any other, a decree for a mechanics' lien, adjudged valid, in spite of the most strenuous opposition, in favor of Gilsdorff, for $11,685.28, this is the amount now due. Any legal difficulties or objections which could be made to the Franklin Savings Bank in their discretion enforcing this decree now in their hands, could be made only by long, vexatious and necessarily expensive litigation, the issue of which would be in the highest degree doubtful, with the weight of probability very much in favor of the bank.

Secondly: the Grant & Price claim, which, during the last few months has been taken up as a sort of speculation by new counsel, and will be pushed with vigor, is for $15,500. This claim may be as intimated, settled now, for $500, but this is simply because as against the encumbrancer, the Franklin Savings Bank, the defense is a perfect one on legal propositions. The whole encumbrance being ahead of them, they therefore place little pecuniary value on the claim. But by a recent decision of the Supreme court, *Clark, et al.*, v. *Manning*, Chicago Legal News, February 22, 1879, overruling previous decisions, and by the Gilsdorff case, the case against us (all persons in interest under the original trust) stands in a very different light, and can only be met by an answer on the facts.

We are aware that you claim that Grant & Price are not entitled to further compensation at all, but the same reasons which led to a judgment at law for the amount against you, might with probability perhaps, be relied on to produce again an adverse decision.

The claim which, if we are successful in the litigation with the Franklin Savings Bank, would become a very serious one upon the interests of the children, is, in the event of the acceptance of this proposition, out of the way.

Thirdly: What may be the result of the litigation, so far as the interests of the children are concerned, your interest and that of Mrs. Taylor are subject to the mortgages amounting now in the aggregate to $55,000, and the interest of yourself and Mrs. Taylor in the property will be reached and taken possession of by the Franklin Savings Bank, the trust deeds will be foreclosed as to you and as to her. This is our opinion after careful study of the situation, with a desire to avoid such a conclusion, if possible.

Your interest is not great or valuable, but Mrs. Taylor's is a very large part of the whole trust; she is entitled, by the terms of it to all of the rents, profits and issues so long as you both shall live, and in the event of your death, first, to $3,000 a year for the remainder of her life. Therefore, assuming that we shall be as successful as can possibly be hoped, in the litigation, the purchaser at the sale of your and Mrs. Taylor's interests would be able to reach and retain the proceeds from the entire estate until Mrs. Taylors' death. Viewing this with reference to the childrens' interests (not Mrs. Taylors') we note

lor, alluding to having seen Mr. Thomas, and Mr. Thomas having come to see me. And I had some conversation with him; I can't remember how many times, or how definite it was, and it resulted finally, in my being referred to Mr. Swift, and Mr. Swift made a proposition of settlement to me as solicitor for the guardian *ad litem*. I submitted that to Mr. Peckham, and consulted with him about it, and it was concluded that before it was accepted, although we both believed it to be for the advantage of the children to accept, we should submit it to Mr. Frank C. Taylor, and tell him that we didn't want to make any settlement like that without his approbation, since he was the father and natural guardian of the children, although Mr. Peckham had the responsibillity of deciding; and I had some correspondence with Mr. Taylor, in consequence of which I went to Mr. Swift and told him that the proposition as made—

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Secondly: the Grant & Price claim, which, during the last few months has been taken up as a sort of speculation by new counsel, and will be pushed with vigor, is for $15,500. This claim may be as intimated, settled now, for $500, but this is simply because as against the encumbrancer, the Franklin Savings Bank, the defense is a perfect one on legal propositions. The whole encumbrance being ahead of them, they therefore place little pecuniary value on the claim. But by a recent decision of the Supreme court, *Clark, et al.*, v. *Manning*, Chicago Legal News, February 22, 1879, overruling previous decisions, and by the Gilsdorff case, the case against us (all persons in interest under the original trust) stands in a very different light, and can only be met by an answer on the facts.

We are aware that you claim that Grant & Price are not entitled to further compensation at all, but the same reasons which led to a judgment at law for the amount against you, might with probability perhaps, be relied on to produce again an adverse decision.

The claim which, if we are successful in the litigation with the Franklin Savings Bank, would become a very serious one upon the interests of the children, is, in the event of the acceptance of this proposition, out of the way.

Thirdly: What may be the result of the litigation, so far as the interests of the children are concerned, your interest and that of Mrs. Taylor are subject to the mortgages amounting now in the aggregate to $55,000, and the interest of yourself and Mrs. Taylor in the property will be reached and taken possession of by the Franklin Savings Bank, the trust deeds will be foreclosed as to you and as to her. This is our opinion after careful study of the situation, with a desire to avoid such a conclusion, if possible.

Your interest is not great or valuable, but Mrs. Taylor's is a very large part of the whole trust; she is entitled, by the terms of it to all of the rents, profits and issues so long as you both shall live, and in the event of your death, first, to $3,000 a year for the remainder of her life. Therefore, assuming that we shall be as successful as can possibly be hoped, in the litigation, the purchaser at the sale of your and Mrs. Taylor's interests would be able to reach and retain the proceeds from the entire estate until Mrs. Taylors' death. Viewing this with reference to the childrens' interests (not Mrs. Taylors') we note

that in the case of the settlement proposed, the income of one house, or the use of it, remains during her life, to Mrs. Taylor, who it can be safely assumed, will use it as she would use any property that was hers, in case of circumstances rendering it necessary or expedient for the advantage and well being of her children. In case of a rejection of the proposition and termination to the litigation in our favor, the children would have to wait for their mother's death before being able to assert such right as they might then perhaps, after still further litigation on their part, be adjudged possessed of. Meanwhile, all benefit of the property would be lost to them.

Of course we cannot properly consider Mrs. Taylor's interest in the matter, which it is clear, is very strong on the side of settlement.

Fourthly: All litigation is uncertain. We believe, as we have always done since the discovery of the original deed, that the rights and interests of the children (at least to any extent beyond the amount furnished in cash at the time of the second set of trust deeds or interest thereon) can not be foreclosed in the pending, or indeed in any proceeding, but it would not be proper to say that such would not be incontestibly or inevitably, the issue of the litigation. The relief asked by the supplemental bill of the complainant is asked on a plausible, even if it be not a sound theory in the law. That under the provisions of the trust that a part of the premises may be sold to improve the rest. The court may order the sale of your and Mrs. Taylor's interest entire first, and following that the interest of the children in all but one house and lot, and to perhaps in all, to pay for the improvements, which, at the time they were made, were a proper and reasonable exercise of judgment. We have known courts, particularly in favor of corporations loaning money, to make stronger decisions than this would be. In case of any decision adverse to any part of their claim, the bank would undoubtedly carry the case to the Supreme court of the United States, which would involve a long and costly litigation in that court We have, as we said, given a careful consideration to the proposition as made, as to these four most important considerations, and have determined that the interest of the children could be best preserved and protected by its acceptance. We hope you will agree with us, for, although of course upon Mr. Peckham, under the direction and control of the court is imposed the duty by his position, of deciding the matter, the decision should be by all means, of course, if any way possible the one agreeable to the judgment and feelings of the father and natural guardian of the children. The court will not allow the settlement made unless, in the opinion of the Judge, from his knowledge of the case and the representations of the counsel, it is fair to the children. In case the proposition seems disappointing to you from not being so favorable as you expected, it should be remembered that no definite proposition has ever before been made; that it is not at all likely that any such would ever be made, except after a full consultation of the authorities of the bank with their coun-

sel; that such a consultation having now been made, the result is a definite proposition, and it is our opinion will not be improved. For ourselves, in view of all the considerations we have mentioned, we have never been sanguine of a final offer of anything better than this, although confident that some offer of settlement would be made. We have preferred to make this statement in writing, that it might be considered as a whole, and not hastily or piecemeal by you, in coming to a conclusion.

As it is desirable that we should all be together when we talk the matter over, and as Mr. Peckham is employed constantly at the bank during the week, I suggest that we (Mr. Peckham and myself) drive out to Evanston next Sunday morning and see you. If no other arrangement seems more convenient to you, we will assume that this is satisfactory and take that opportunity to come out.

Yours truly."

It is not signed here, but I signed it myself.

By Mr. KENDALL: I will object to the introduction of the press copy of the letter as read, and unless it appears that the original cannot be had; I presume it could, upon notice; because it is evident, your Honor, that some portions of the letter it is difficult for the witness to read, and I prefer in the place of it that the original should be had.

Mr. Kendall hereupon accepted notice to produce the original letter, a copy of which has just been introduced in evidence.

Will you state, Mr. Brown, whether the guardian *ad litem* carried out that settlement as indicated in that letter?

A. Subsequently; but there was another matter between this. Mr. Frank C. Taylor, after seeing me and talking with me, said he preferred to talk with me alone than to do as I suggested, and talk with myself and Mr. Peckham, and expressed his disapproval of the arrangement in a letter which he wrote me. Under Mr. Peckham's instructions, after further consideration of them, I went to Mr. Swift and told him that we could not accept the proposition, and made him a counter proposition, which was the same as that made to us, except that the corner house was to be substituted for one of the inside houses. Mr. Swift told me that the offer must be considered withdrawn—there was no offer pending; that he would consult with his clients and see whether they would increase the offer or renew it. Afterward,

Mr. Thomas was again in the city; he saw me, and Mr. Taylor informed me by letter, or verbally, that Mr. Thomas had seen him and had some conversation with him; and Mr. Thomas and Mr. Taylor were together at my office upon one occasion as I remember. What was said I do not exactly remember, but it was concerning this matter, and I was referred to Mr. Swift. And then a settlement was arranged between Mr. Swift and myself representing the guardian *ad litem*, which was substantially as expressed in the letter which I have read which I sent to Mr. Taylor, except that there was an agreement; that the settlement was agreed upon and a written memorandum of it was made and signed by the parties, which I understand is in evidence. It was signed by Orville Peckham, guardian *ad litem*, signed by me, as attorney for the guardian and for the infant defendants and signed by the Franklin Savings Bank, by Grant & Swift, and that settlement was carried out. An appraisement was made of the houses and Mr. Peckham decided to take the house next to the corner, instead of taking the corner house, under the option, with the payment of something to boot, I believe, on the request, as we viewed it, or instructions by letter of Frank Taylor.

Q. That settlement as finally made, then, Mr. Brown, I understand, was made with the approval of Frank C. Taylor, and with the approval of the guardian *ad litem*?

A. It was.

Q. Do you know whether it was submitted to the court?

A. My recollection is not very clear upon the subject, but I have an impression which amounts to a moral certainty that it was submitted to Judge Blodgett. I know that it was talked over with Mr. Bishop, who was at that time entering orders, acting as a sort of vice-chancellor, as near as I could understand it.

Q. You mean Henry W. Bishop, a master in chancery of this court?

A. Henry W. Bishop, a master in chancery of this court; but I can't say as I have an independent recollection of any interview which I had, or which Mr. Peckham had with Judge Blodgett. My impression, however, is that we were satisfied, either by the fact that we did have such an interview ourselves, or by the fact that it was in our knowledge that Mr. Bishop had had such an interview; that the judge had passed upon the advisability of the matter of settlement

Q. You know when Frank C. Taylor and his wife and family took possession of this house that was turned over to them on the settlement?

A. Well, I don't remember; I don't think it was turned over to them. I should'nt so regard it. By the terms of the settlement, the way in which the settlement was carried out, it was agreed between counsel, either by stipulation or verbally, I don't know how, I don't remember that, but at any rate, it was understood between the counel that the case should proceed to a decree on the objection which

had been made by the infant defendants, and the foreclosure of the property being withdrawn, and that was done in some form, taken from the files in some cases. I think under permission; but at any rate, it was understood that objection to the foreclosure should be withdrawn; the entire property which was sought to be foreclosed was sold under the decree by the master in chancery. A certain amount of money which had been in the hands of the receiver—a certain proportion of the money was paid over to me representing the guardian *ad litem*; certain other released and papers of this house next to the corner, releasing this house next to the corner from various liens or claims of liens held by the Franklin Savings Bank were made to Orville Peckham, and the certificate of purchase of this particular house, which was sold separately, was endorsed and turned over by the Franklin Savings Bank to Orville Peckham, as trustee, for whoever was entitled to it under the settlement. There was then some other papers secured by us from Frank Taylor, Mrs. Taylor and Charles H. Mulliken, from Mr. Thomas, or from the Franklin Savings Bank, I forget which, a quit-claim deed, and that included all the property except this house next to the corner, and were given to Mr. Swift by us. Then it was a matter of considerable doubt in Mr. Peckham's mind and my own what should be done with the proceeds of this settlement, which we had, and we took advise upon that subject—consulted counsel, and then Orville Peckham filed a bill for direction, making the infant children of Frank Taylor parties, in the Circuit court of Cook county, and a decree was entered directing him to—

By Mr. SWIFT: We better have the record evidence, Mr. Brown, I have it here.

The WITNESS: I hold the bill in my hands which was filed by Orville Peckham for that direction.

By Mr. SWIFT: I offer that bill in evidence, excepting the exhibits, which have already gone into the evidence, as defendant's "Exhibit 31," which is as follows:

## Petition of Orville Peckham.

### In the Circuit Court of Cook County.

### In Chancery.

October Term, A. D. 1880.

Orville Peckham, of Chicago, in the county of Cook and state of Illinois, showeth unto this Honorable court that upon the 13th day of June, 1871, Maria Louise Taylor, wife of Frank C. Taylor, of Chicago, in said county and state, was seized in fee simple absolute of the following premises, to-wit: That part of block sixteen (16), in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the east line of Dearborn street, three hundred (300) feet north of the southwest corner of said block, thence running north on the east line of Dearborn street one hundred and three (103) feet more or less, to the northwest corner of said block; thence east on the south line of Maple street, one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet more or less; thence west, parallel with Maple street, one hundred and fifty (150) feet to the place of beginning, in the city of Chicago, county of Cook, and state of Illinois, the same being then lot four (4) in the plat of subdivision of block sixteen (16) Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county, in book 105 of deeds, on page 51. The said premises your orator shows now constitute lot one (1) and two (2), three (3), four (4) and five (5) in the subdivision of said lot four (4) block sixteen (16) Bushnell's addition to Chicago, which has since been made. Your petitioner further shows, that on the said day of June 13, 1871, the

said Maria Louise Taylor, joining with Frank C. Taylor, her husband, made a deed of conveyance of said premises, to one Ira Scott, in trust for certain purposes and on certain conditions therein expressed, a copy of which said deed is annexed hereto, marked "Exhibit A," and your orator prays that it may be read here as a part of this bill.

And your orator further shows, that on the 30th day of January, 1873, Frank C. Taylor and Maria L. Taylor filed in the Superior court of this county on the chancery side thereof a certain bill of complaint against Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Edward Brown, the Franklin Savings Bank and to all whom it might concern, and your orator shows that such proceedings were had upon said bill as resulted in the entry of a decree by said Superior court on the 6th day of March, A. D. 1873, a copy of which is hereto annexed, marked "Exhibit B," and made a part of this bill, and which your orator prays may be here read as though inserted herein.

And your orator says that subsequent to the entry of said decree the said Frank C. and Maria L. Taylor filed a certain other bill of complaint in said Superior court against Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, and that such proceedings in said court were had on said bill, that on the 19th day of August, 1873, a certain decree was entered in said cause by said court, a copy of which decree is hereto annexed, marked "Exhibit C," and made a part of this bill, and which your orator prays may be here read as though herein inserted.

And your orator further shows, that on or about the 23d day of August, Chas. H. Mulliken, trustee, Frank C Taylor and Maria L. Taylor, executed and delivered to Francis S. Howe, deeds of trust of a portion of the premises described above to-wit: Lot one (1), two (2), four (4) and five (5) in the subdivision of lot four (4), block (16), Bushnell's addition to Chicago for the benefit of the Franklin Savings Bank, of Pawtucket, to secure four notes of nine thousand dollars ($9,000), each, made and delivered by said Frank C. and Maria L. Taylor and Chas. H. Muiliken, trustee, to said Franklin Savings Bank, one lot being conveyed to secure

each note. And your orator further shows that on the 1st day of January, 1874, the said Frank C. and Maria L. Taylor and Chas. H. Mulliken, trustee, executed and delivered to Francis S. Howe for the benefit of the Franklin Savings Bank, a deed of trust of said lots one (1), two (2), four (4) and five (5) aforesaid, for the purpose of securing a note of two thousand eight hundred and seventyfive dollars ($2,875), made and delivered by said Chas. H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor to the said Franklin Savings Bank. And your orator further shows that the said Chas H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor had previously conveyed in fee simple to Julia S. Taylor, the remaining portion of said premises, to wit: Lot three (3) in the subdivision of lot four (4) in block sixteen (16) aforesaid.

And your orator shows that since the execution of the trust deed described above, the Franklin Savings Bank has become the owner, by purchase by assignment from the original owners thereof, of various claims against the property above described for mechanics' liens, to-wit: Of a claim for several thousand dollars by one Gilsdorff, in favor of whom a decree for a mechanics' lien against said property had been rendered by a court of competent jurisdiction, and of other claims held by Grant & Price and by the Gowan Marble Company. And your orator shows that at some time before 1877, default having been made in the payment of the notes belonging to the Franklin Savings Bank as above set forth, the said Franklin Savings Bank filed their bill to foreclose the trust deeds above described to Francis S. Howe in the Circuit court of the United States for the Northern district of Illinois. Your orator further shows that in said cause so arising he was appointed guardian *ad litem* of the infants Frank C. Taylor Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, and also of Robert C. Taylor and Katherine Taylor which last two were born after said cause was instituted and were made parties by supplemental bill.

And your orator shows that after his appointment as such guardian *ad litem* he filed as the next friend of certain of these infants bills of review in the Superior court of Cook county, making all persons interested parties thereto, and that on said bills of review such action was had in said Superior court as resulted in the entry

of two decrees by said court, copies of which decrees are hereto annexed, marked respectively "Exhibit D" and "E," and made a part of this bill, which your orator prays may be here read as though here inserted.

And your orator further shows that as guardian *ad litem* he filed the answers of the infant defendants in the foreclosure suit in the United States court, and made such defense to the bill of the Franklin Savings Bank for them as he was able.

And your orator further shows that before the said cause came to trial he, as guardian *ad litem* of the infants above named, being all the living children of Frank C. and Maria L. Taylor, and his solicitor, on the one hand, and the Franklin Savings Bank and their solicitors, on the other, came to an agreement of settlement in relation to said cause as far as the interest of his wards, the infant defendants above named, were concerned. Said agreement was as follows: Your orator agreed as guardian *ad litem* to withdraw all the answers of the infant defendants filed in said cause, and substitute therefor the ordinary answer of a guardian *ad litem*, submitting the rights of the infant defendants to the court, and to make no opposition or defense to the prayer of the Franklin Savings Bank for a decree of foreclosure against all the parties defendant in said cause. The Franklin Savings Bank agreed on its part after said decree was obtained and a sale of the said property made thereunder to convey or procure the conveyance of one of said lots with the improvements thereon standing to your orator as the representative of the said infant defendants, and also agreed to pay over certain money not relevant to the purpose of this bill, and it further agreed to release said lot and house so conveyed from all claims under the mechanics' lien above mentioned. And your orator shows that said settlement has been fully carried out and that he withdrew all opposition to the entry of such a decree as is described above, and that such decree was entered and the sale made under it, at which sale the Franklin Savings Bank became the purchasers of each of said lots one (1), two (2), four (4) and five (5) described above, and received certificates of purchase therefor from the master in chancery of said United States court. And your orator shows that Chas. H. Mulliken, as trustee, Frank C. Taylor and Maria L. Taylor joined in a quit-claim deed of all said property after said sale to Hiram H. Thomas.

Your orator shows that in further pursuance of said agreement, said Franklin Savings Bank assigned and transferred to him the certificate of purchase of said lot two (2), aforesaid, and released all claims of lien thereon, and said Hiram H. Thomas executed and delivered to your said orator a quit-claim deed of said lot two (2). And your orator therefore shows that he holds said lot two (2),

aforesaid, with the improvements thereon, in trust, under the circumstances aforesaid, and that he desires to resign the same and be no longer charged therewith, but that he is uncertain what duties and liabilities have been devolved upon him by said trust, and prays that the same may be defined and stated with all necessary fullness and precision by this court for his guidance and protection, and that he may be authorized either to convey said trust property by his deed with covenants of warranty against his own acts and the claims of all persons lawfully claiming through him, and to assign said certificate of purchase either to said infants named above, or to some suitable person to be named by this court subject to a trust defined and stated by the court. And upon the delivery of such deed and certificate, and the acceptance of said trust by the grantee, he be thenceforth fully discharged and acquitted of said trust and of all liability for the future administration thereof.

And as the persons interested in the disposition of said property and the defination and determination of said trust, your orator makes Frank C. Taylor, Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor and Katherine Taylor, who are all infants, parties defendant hereto, and prays that a writ of summons under the seal of this court may issue to them commanding them and each of them to be and appear on a day certain before this Honorable court, and full answer make to the premises and stand to and abide any order made by the court herein. And as in duty bound will ever pray.

ORVILLE PECKHAM,

By his Solicitor,
EDWARD O. BROWN.

PECKHAM & BROWN,
*Of Counsel.*

(Exhibits omitted.)

On the back of the bill, Exhibit 31, are the following indorsements: 36,619. Bill. *Orville Peckham* vs. *Frank C. Taylor, Jr., Josephine S. Taylor, et al.* Circuit court of the county of Cook. Filed, October 30, 1880.

EDW. O. BROWN,
*Solicitor.*

JACOB GROSS,
*Clerk.*

By the WITNESS: There was a decree entered upon this, the original draft of which, in my handwriting, I hold in my hands.

By Mr. SWIFT: I now offer that decree in evidence, as defendant's "Exhibit 32," which is as follows:

CIRCUIT COURT OF COOK COUNTY.

March Term. A. D. 1881.

Orville Peckham,
86,619
1,706
vs.
Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, infant defendants.

This cause coming on to be heard upon the bill of Orville Peckham and the answer of the said infant defendants by Louis Hink, their guardian *ad litem*, and the court having heard the evidence in this cause and being fully advised in the premises, doth find that the allegations of said complainant's bill are true, and doth order, adjudge and decree that the said Orville Peckham, the complainant, be and is hereby authorized and directed to convey lot two (2) in the subdivision of lot four (4), block sixteen (16), Bushnell's addition to Chicago, by his deed with covenants of warranty against his own acts and the claims of all persons lawfully claiming through him, and to assign the certificate of purchase issued by the master in chancery of the United States Circuit court, and now held by him (the said Peckham) of said lot two (2) to the said defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Laylor, to have and to hold to them, their heirs and assigns to their use, and if by law children of Frank C. and Maria L. Taylor hereafter born be entitled to share in such property, then to their use also, forever.

On the back are the following endorsements:

36,619. 1,706. *Peckham* vs. *Taylor, et. al.* Decree enter W. H. B., March 25, 1881.

By the WITNESS: In accordance with that decree Mr. Peckham made a deed to the living intant children of Frank Taylor of the property, and also indorsed and assigned over the certificate of purchase, which had beed assigned to him, and sent these papers to Frank C. Taylor, guardian of the persons and property of these children, he having been appointed by the Probate court of Cook county. That was sent to him in May, 1881, and I sent certain other papers which had been used in the cause, including the original trust deed. Mr. Frank C. Taylor had an office under the Sherman house; he was not in when the letter and envelope reached him, and they were placed upon his desk; he never received them until October, 1881. When he said he had never received the papers and had never received my letter; in his company, with him, in his office, I made a search and found that the envelope, unopened, had been carried over on the top of his revolving desk, and he did find the letter with those papers the latter part of October, 1881. I don't know when the family moved into the house. They were living in Evanston at the time the settlement was made, and when they came to Chicago they moved into that house, but I think that it was rented to some other parties for some time after the settlement was made.

By Mr. KENDALL: I would like, your Honor, to preserve the right to cross-examine, until this testimony is written up and I can look it over; it may shorten the process and make it a little smoother.

Which request was granted.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 33," an order appointing the guardian *ad litem* in the case of *Peckham* vs. *Taylor*, which is as follows.

UNITED STATES OF AMERICA

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

Pleas, before the Honorable Wm. H. Barnum one of the Judges of the Circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and state, on the third Monday (being the 17th day) of January, in the year of our Lord, one thousand, eight hundred and eighty-one and of the Independence of the United States the one hundred and fifth.

Present: Honorable Wm. H. Barnum one of the judges of the Circuit court of Cook county, state of Illinois.

L. L. MILLS,
*States Attorney.*
O. L. MANN,
*Sheriff.*

Attest: JACOB GROSS,
*Clerk.*

Be it remembered, that at the term aforesaid, to-wit: on the 18th day of February, A. D. 1881, the following, among other proceedings, were had and entered of record in said court, to-wit:

Orville Peckham,
*vs.*
36,619
1,706
Frank C. Taylor, Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Robert C. Taylor and Katherine Taylor. } *Bill.*

On filing due proof of personal service of process issued in said cause on all of the aforenamed defendants, ten days at least before the return day thereof.

On motion it is ordered that Louis Hink, Esq., be, and he hereby is appointed guardian *ad litem* for each and all of the above named defendants who are minors to appear and defend said cause in their behalf.

And thereupon the answer of said guardian *ad litem* is filed herein.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Henry Best, clerk of the Circuit court of Cook county, and the keeper of the records and files thereof, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order made and entered of record on the 18th day of February, A. D. 1881, in a certain cause lately pending in said court, on the chancery side thereof, between Orville Peckham, complainant, and Frank C. Taylor, *et. al.*, defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 7th day of June, 1889.

[COURT SEAL.] HENRY BEST,
*Clerk.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 34," the answer of the guardian *ad litem*, filed February 18, 1881, in the suit of *Orville Peckham* vs. *Taylor, et al.*, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE CIRCUIT COURT OF COOK COUNTY.

IN CHANCERY.

Orville Peckham,
*vs.*
Frank C. Taylor, Jr., Maria Louise Taylor, Josephine Taylor, Alexander Taylor, Robert C. Taylor and Katherine Taylor.

*Answer of the above named defendants by their guardian ad litem, Louis Hink, to the bill of complaint of Orville Peekham:*

We, said defendants, by their guardian *ad litem*, Louis Hink, answering say, that they know nothing of the matters in said bill contained save as set forth in said bill, and that they are infants, and submit their rights to this Honorable court.

FRANK C. TAYLOR, Jr.,
MARIA LOUISE TAYLOR,
JOSEPHINE TAYLOR,
ALEXANDER TAYLOR,
ROBERT C. TAYLOR AND
KATHERINE TAYLOR,
By LOUIS HINK,
Their guardian *ad litem*.

On the back is indorsed the following: Circuit court of Cook county. In chancery. *Orville Peckham* vs. *Frank C. Taylor, et al.* 1,706. Answer of infant defendants by their guardian *ad litem*, filed Feb. 18, 1881, Jacob Gross, Clerk. Due $1.50, paid March 25, 1881.

JACOB GROSS,
*Clerk.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 35," the summons in *Peckham* vs. *Taylor*, filed November 15, 1880, which is as follows:

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

*The People of the State of Illinois, to the Sheriff of said County, Greeting:*

We command you that you summon Frank C. Taylor, Jr., Josephine S. Taylor, Maria Louise Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor, who are infants if they shall be found in your county, personally to be and appear before the Circuit court of Cook county, on the first day of the next term thereof, to be holden at the court house in Chicago, in said Cook county, on the third Monday of November, A. D. 1880, to answer unto Orville Peckham in his certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with the endorsement thereon, in what manner you shall have executed the same.

Witness: Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 30th day of October, A. D. 1880.

[COURT SEAL] JACOB GROSS,
*Clerk.*

The within named defendants not found in my county this 15th day of November, A. D. 1880.

JOHN HOFFMAN,
*Sheriff.*
By WM. F. SURSOLER,
*Deputy.*

Paid, $12.

On the back are the following endorsements: 36,619. Circuit court of Cook county. Nov. Term, 1880. *Peckham* vs. *Taylor*, *et al.* Chancery summons. Filed this 15th day of November, A. D. 1880. Alias issued.

EDWD. O. BROWN,
*Solicitor.*

JACOB GROSS,
*Clerk.*

By Mr. SWIFT: I now offer in evidence as defendant's "Exhihit 36," the summons in the same case filed November 24, 1880, which is as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

*The People of the State of Illinois, to the Sheriff of said County, Greeting:*

We again command you that you summon Frank C. Taylor, Jr., Josephine S. Taylor, Maria Louise Taylor, Alexander Taylor, Robert C. Taylor, Katherine Taylor, who are infants, if they shall be found in your county, personally to be and appear before the Circuit court of Cook county, on the first day of the next term thereof, to be holden at the court house in Chicago, in said Cook county, on the third Monday of December, A. D. 1880, to answer unto Orville Peckham in his certain bill of complaint filed in said court, on the chancery side thereof.

And have you then and there this writ, with an indorsement thereon, in what manner you shall have executed the same.

Witness: Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 15th day of November, A. D. 1880.

[COURT SEAL.] JACOB GROSS,

*Clerk.*

Served this writ on each of the within named defendants: Frank C. Taylor, Jr., Josephine S. Taylor and Maria Louise Taylor, by delivering a copy of this writ to each of them. And on each of the within named defendants: Alexander Taylor, Robert C. Taylor and Katherine Taylor, by leaving a true copy of this writ for each of them at their usual place of abode with Frank C. Taylor, he being a member of their family, a person over the age of ten years, and at the same time explaining to him the contents thereof this 24th day of November, A. D. 1880.

JOHN HOFFMAN,
*Sheriff.*

By A. W. FLETCHER,
*Deputy.*

On the back are the following indorsements: 36,619. Circuit court of Cook county. December term, 1880. *Peckham* vs. *Taylor, et al.* Alias chancery summons. Filed this 24th day of November, A. D. 1880.

EDWARD C. BROWN,
*Solicitor.*

JACOB GROSS,
*Clerk.*

By agreement of counsel, examination adjourned to Saturday, June 8, 1889, at 2 o'clock, P. M.

JUNE 10, 1889.

Examination resumed pursuant to agreement.

Counsel present as before.

JOHN WOODBRIDGE, a witness called on behalf of defendant, being first duly sworn, testified as follows:

*Direct Examination by Mr. Swift.*

Q. You are a member of the bar of Chicago, and have been a practicing lawyer here for more thant wenty years?

A. Yes, sir.

Q. Were you the attorney for the plaintiff in the case of *Gilsdorf and Baumann* v. *Frank C. Taylor, et al.*, a petition for a mechanics' lien, and intervening petition in the Circuit court of Cook county, Illinois, some time in 1873?

A. I can't remember the precise date, but I was for the petitioners in that case.

Q. Look at the original petition I now hand you, and see if that refreshes your recollection as to the date? (Handing witness petition introduced in evidence as complainant's Exhibit 6.)

A. I was for the petitioners in that case, and by refreshing my recollection, I conclude that that petition was filed September 13, 1873.

Q. Is the petition that you now have, the petition filed by you in that case, Mr. Woodbridge?

A. I infer so; I see that my name, in my hand writing is upon it as solicitor and of counsel for petitioners.

Q. Did you try that case on behalf of the petitioners, Mr. Woodbridge?

A. I did sir; Mr. Blanke assisted at the trial.

Q. And who tried it on behalf of the defendants?

A. Howe & Russell. I think perhaps somebody was there besides, but I don't remember, and I am not absolutely certain that both of the firm of Howe & Russell was present, but they were the counsel and I should think that they were both there.

Q. Will you state whether, upon the trial of that cause, a copy of what purported to be the trust deed from Frank C. Taylor and wife to Ira Scott, as restored by decree in chancery by the Superior court of Cook county, was introduced in evidence?

A. To the best of my belief, it was.

Q. Who introduced it?

A. I should say I referred to it in the opening, and from having refreshed my recollection by some memoranda in my own hand writing, I am quite sure the defendant also introduced it.

Q. Will you look at the document I now hand you, purporting to be the bill of exceptions in that case, page 132, and after examining that, state, if your recollection is refreshed by it, whether you have any doubt about that document being introduced on that trial by the defendant's counsel?

A. I hold in my hand what purports to be a bill of exceptions in that case, on page 133 I find the following entry, in my own hand writing: "defendants here offer trust deed to Ira Scott, a true copy of which is annexed to bill." That entry is in my own hand writing, but whether it was annexed to the bill or not, I am satisfied that reference is there made to the restored trust deed referred to in the question, but I never saw what I understand to the original trust deed.

Q. Did you have any knowledge Mr. Woodbridge, at the time of the trial of that cause, or until a long time after that case was finally disposed of, that the trust deed supposed to have been destroyed by fire, differed in any manner from the supposed restored copy used in evidence upon that trial?

A. No, sir.

Q. In other words, both the petitioners and the defendants tried the Gilsdorff case upon the understanding that the trust deed introduced in evidence by the defendants was a true copy of the one supposed to have been destroyed by fire, is that so?

A. Yes, sir; a substantial copy.

Q. Did you act for the petitioners in taking steps to enforce that decree, after it was obtained?

A. My recollection is that we had the—after it went to the Supreme court and the decree was affirmed, that I undertook to have it advertized; I think it was advertized, but that before the time elapsed, I sold the decree, or my client sold the decree to the bank—what bank is it?

Q. Franklin Savings Bank, of Pawtucket, Rhode Island.

A. Yes, sir.

Q. For what amount?

A. For the full amount, interest and costs I think; don't think there was any deduction made. I hold in my hand a paper in the hand writing of George F. Blanke, dated the 19th day of March, 1875, signed by Frederick Baumann, Edward Baumann, Henry Gilsdorff and James B. Sullivan, attached to the master's report of sale and distribution, which has been introduced in evidence as complainant's "Exhibit 6j," that I believe to be the assignment made to the bank by the gentlemen whose names I have repeated.

*Cross-Examination by Mr. Kendall.*

Q. Do you recollect, Mr. Woodbridge, whether the contract for the building which Mr. Gilsdorff predicated his claim upon in this mechanics' lien suit, was in writing?

A. I think it was, sir.

Q. Recollect whether it was attached to the bill or petition in that case on the trial?

A. I don't remember.

Q. Do you know where it is now?

A. No, sir.

Q. Know what was done with it at the time, or after the trial?

A. I think it was introduced in evidence, sir, but that is a mere impression, it is a very strong one, but I don't remember the act of introducing it; bill of exceptions would show, of course.

Q. Is the contract attached to the bill of exceptions?

A. Yes, the contract was offered in evidence, according to the bill of exceptions. (Examining bill.) I find this entry: "Counsel for

plaintiff offers in evidence copy of contract made August 27, 1872, between Henry Gilsdorff and Frank C Taylor," and that is put in as number 1, first piece of evidence introduced, also plans and specifications, and that was number 2, so I suppose there can't be any doubt that it was introduced and embodied in the record that went to the Supreme court, because there seems to be the bill of exceptions.

By Mr. KENDALL: Have you those contracts, Mr. Swift?

By Mr. SWIFT: I couldn't say. I have any quantity of papers in connection with this matter.

By Mr. KENDALL: Will you see and produce them?

By Mr. SWIFT: Yes, I will look.

Mr. Swift here accepts notice to produce contract between Gilsdorff and Taylor.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 37," certified copy of an order of the Circuit court of Cook county, Illinois, appointing Thomas G. Windes master in chancery, as successor to Walter Butler, which is as follows:

And now coming on before the court the matter of the appointment of masters in chancery for the Circuit court of Cook county, Illinois, to fill the vacancies occasioned by the expiration of the respective terms of the late masters, Walter Butler, George Willard, Henry Waller, Charles M Hardy and Horatio L Wait, and William H. Barnum, Judge of said court, before whom the matter of said appointments now comes, having first convened the remaining Judges of said court, viz: the Hon. John G. Rogers, Chief Justice thereof the Hon William K. McAllister, the Hon. Murray F. Tuley and the Hon. Thomas A. Moran, for consultation and concurrence with the said Judge William H. Barnum in the premises, the court being now fully advised in the premises, doth, by and with the concurrence of said other four Judges of said Circuit court order, adjudge and decree the appointment of said Horatio L. Wait, said Henry Waller, Lawrence J. J. Nissen, Arno Voss and Thomas G. Windes to be masters in chancery, of said Circuit court for the term of two years, next ensuing the first day of December, A. D. 1880, upon each of said appointees filing in the clerk's office of this court by said December 1, 1880, his oath of office in due form of law, and also his bond as master in the penal sum of $10,000 with surety to be approved by the court. And it is further ordered by the court that said Lawrence J J. Nissen shall be the successor and succeed the business of the late master Charles M. Hardy and that said Arno Voss shall be the successor and succeed to the business of the late master George Willard, and Thomas G. Windes shall be the successor and succeed to the business of the late master Walter Butler.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 38," a quit-claim deed from Charles H. Mulliken, Frank C. Taylor and Maria Louise Taylor to Hiram H. Thomas, which is as follows:

This indenture witnesseth that the grantors, Charles H. Mulliken, trustee, Frank C. Taylor and Maria Louise Taylor, his wife, all of the city of Chicago, in the county of Cook, and state of Illinois, for the consideration of ten thousand ($10,000) dollars, convey and quit-claim to Hiram H. Thomas, of the city of Providence, county of Providence, and state of Rhode Island etc., all interest in the following described real estate, to-wit:

Lots one (1), two (2), four (4) and (5), in the subdivision of lot (4), in block (16), Bushnell's addition to Chicago, situated in the county of Cook, in the state of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 20th dav of Ju

FRANK C. TAYLOR. [SEAL.]
MARIA LOUISE TAYLOR. [SEAL.]

H. MULLIKEN. [SEAL.]
*Trustee.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Edward O. Brown, a notary public in and for said county in the state aforesaid, do hereby certify that Frank C. Taylor and Maria Louise Taylor, his wife, personally known to me to be the same person whose names are subscribed to the foregoing instru-

ment, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 19th day of July, A. D. 1880.

EDWARD O. BROWN,
*Notary Public.*

[EDWARD O. BROWN.]
[NOTARIAL SEAL.]
[COOK COUNTY, ILL.]

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, David Campbell, a notary public in and for said county, in the state aforesaid, do hereby certify that Charles H. Mulliken, trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered such instrument as his free and voluntary act, as trustee, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 20th day of July, A. D. 1880.

[DAVID CAMPBELL.]
[NOTARY PUBLIC.]
[COOK COUNTY, ILL.]

DAVID CAMPBELL,
*Notary Public.*
Cook county, Ill.

No 280,667. Filed for record September 23, 1880, at 11, A. M.

JAS. W. BROCKWAY,
*Recorder*

By Mr. SWIFT: I object to the introduction in evidence by complainant, of the opinion of the Supreme court, on the ground that it is not admissible in evidence, but not on the ground of its being a certified copy

by stipulation of counsel, this objection to have the same effect as if it had been entered of record at the time the opinion was offered.

By agreement, examination adjourned to June 12, 1889, at 2 o'clock P. M.

JUNE 12, 1889.

Examination resumed pursuant to adjournment.

Counsel present as before.

By Mr. SWIFT: I now introduce in evidence as defendant's "Exhibit 39," a quit-claim deed from Hiram H. Thomas to Orville Peckham, dated July 20, 1880, recorded in book 1,045 of records, on page 32, which is as follows

This indenture witnesseth, that the grantor Hiram H. Thomas and Mary M. Thomas, wife of said Hiram, of the city of Providence in the county of Providence, and state of Rhode Island, for the consideration of two thousand ($2,000) dollars, conveys and quit-claims to Orville Peckham, of the city of Chicago, county of Cook, and state of Illinois, all interest in the following described real estate, to-wit: Lot two (2) in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, situated in the county of Cook, in the state of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated this 20th day of July, A. D. 1880

HIRAM H. THOMAS. [SEAL.]
MARY M. THOMAS. [SEAL.]

STATE OF RHODE ISLAND, COUNTY OF PROVIDENCE. } ss.

I, Charles A. Warland, a notary public in and for said county, in the state aforesaid, do hereby certify, that Hiram H. Thomas, and Mary M. Thomas, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and my notarial seal, this nineteenth (19th) day of August, A. D. 1880.

[NOTARIAL SEAL.] CHAS. A WARLAND,
*Notary Public.*

[Endorsed]: State of Illinois, Cook county, ss. No. 289,811. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 23d day of September, A. D. 1880, at 4 o'clock P. M., and recorded in book 1,045 of records, on page 32.

JAS. W. BROCKWAY,
*Recorder.*

By Mr. SWIFT: I also offer in evidence as defendant's 'Exhibit 40," release deed from Franklin Savings Bank to Orville Peckham, being a release of mechanics' lien on the premises therein described, dated July 20, 1880, and recorded in book 1,008 of records, page 522, which is as follows:

This indenture made this twentieth day of July, A. D. 1880, between the Franklin Savings Bank of Pawtucket, Rhode Island, party of the first part, and Orville Peckham, of Chicago, Illinois, party of the second part, witnesseth, that whereas upon July 20, 1874, the Circuit court of Cook county, Illinois, rendered a certain

decree in favor of Henry Gilsdorff, Frederick Baumann, Edward Baumann and James B. Sullivan, as complainants, and against Frank C. Taylor and others, as defendants, establishing a mechanics' lien upon certain premises in the proceedings in said cause described.

And whereas there is now pending in said court, upon the chancery side thereof, a petition for a mechanics' lien upon certain premises described in said petition, in which petition Mary Jane Price, in her own right and as administratix of the estate of John Price, deceased, and James G. Grant are petitioners, and Frank C. Taylor and others, are defendants.

And whereas there is now pending in the Superior court of Cook county, Illinois, a certain other petition for a mechanics' lien upon certain premises in said petition described, in which petition the Gowan Marble Company is the petitioner, and Frank C. Taylor and others, are defendants.

And whereas, the premises covered by said decree, and by both of said petitions include the premises hereinafter described.

And whereas said decree and the claims on which said two petitions are founded have all been assigned to said party of the first part.

Now therefor in consideration of one dollar, and for other good and valuable considerations, the receipt of which is hereby acknowledged, said party of the first part hereby releases and discharges, so far as it can do, as assignee of said decree and of such claims as aforesaid.

Lot two (2), in the subdivision of lot four (4), in block sixteen (16), in Bushnell's addition to Chicago, in the county of Cook, in the State of Illinois, from the lien of said decree, and from all claim in said two pending suits, and from the claims which said two pending suits are brought to enforce.

In witness whereof, said Franklin Savings Bank has caused these presents to be signed by Hiram H. Thomas, its president, and its corporate seal to be hereto attached the day and year first above written.

[CORPORATE SEAL.]

FRANKLIN SAVINGS BANK,
By H. H. THOMAS,
*President.*

[Endorsed]: State of Illinois, Cook county, ss. No. 292,558. Recorded Oct. 12, 1880, at 10 o'clock A. M., book 1,008 of records, page 572.

CHAS. W. BROCKWAY,
*Recorder.*

By Mr. SWIFT: I also introduce in evidence as defendant's "Exhibit 41," special warranty deed from Orville Peckham to Frank C. Taylor, Jr., *et al.*, dated April 22, 1881, recorded in book 1,082 of records, page 52, with the exhibit thereto attached, which is as follows:

This indenture, made this twenty-second day of April, in the year of our Lord, one thousand eight hundred and eighty-one, between Orville Peckham, of the city of Chicago, in the county of Cook, and state of Illinois, and Anne M. Peckham, his wife, party of the first part, and Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor of the same county and state.

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar and of other good and valuable consideration and in accordance with and pursuance of an order of the Circuit court of Cook county, in chancery sitting, entered March 25, 1881, have and by these presents do remise, release, alien and convey unto the said party of the second part, and to their heirs and assigns forever, all the following described lots, piece or parcel of land, situated in the county of Cook, and state of Illinois, and known and described as follows, to-wit: Lot two (2) in the subdivision of lot four (4), block sixteen (16), Bushnell's addition to Chicago.

Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above described premises, with the hereditaments and appurtenances. To have and to hold the said premises above described, with the appurtenances, unto the said party of the second part, their heirs and assigns, forever, to their use, and if by law children of Frank C. and Maria L. Taylor hereafter born, be entitled to share in such property, then to their use also forever.

And the said Orville Peckham, party of the first part, for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said party of the second part, their heirs and assigns, that he has not done, or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged; and that the said premises, against all persons lawfully claiming, or to claim the same, by, through or under him he will warrant and forever defend.

And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege and advantage, and exemption, under or by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof, the said party of the first part, has hereunto set his hand and seal, the day and year first above written.

ORVILLE PECKHAM. [SEAL.]
ANNE M. PECKHAM. [SEAL.]

Signed, sealed and delivered in the presence of

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Edward O. Brown, a notary Public in and for the said county, in the state aforesaid, do hereby certify, that Orville Peckham and Anne M. Peckham, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this twenty-third day of April, A. D. 1881.

EDWARD O. BROWN,
*Notary Public.*

[NOTARIAL SEAL.]

[Endorsed]: State of Illinois, Cook county, ss. No. 322,307. This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 25th day of April, A. D. 1881, at 11 o'clock A. M., and recorded in book 1,082 of records, on page 52.

JAS. W. BROCKWAY,
*Recorder.*

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
COOK COUNTY }

Pleas, before the Honorable William H. Barnum, one of the judges of the Circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and state, on the third Monday (being the 21st day) of March, in the year of our Lord one thousand, eight hundred and eighty-one and of the Independence of the United States, the one hundred and fifth.

Present: Honorable William H. Barnum, one of the judges of the Circuit court of Cook county state of Illinois.

L. L. MILLS,
*States Attorney.*

O L. MANN,
*Sheriff.*

Attest: JACOB GROSS
*Clerk.*

Be it remembered, that at the term aforesaid, to-wit, on the 25th day of March, A. D 1881. the following, among other proceedings, were had and entered of record in said court, to-wit:

Orville Peckham

31,619
1,708

vs

Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, infant defendants } *Bill.*

This cause coming on to be heard upon the bill of Orville Peckham, and the answer of the said infant defendants by Louis Hink, their guardian *ad litem*

And the court having heard the evidence in this cause and being fully advised in the premises doth find that the allegations of said complainant's bill are true, and doth order, adjudge and decree that the said Orville Peckham, the complainant, be, and is hereby authorized and directed to convey lot two (2), in the subdivision of lot four (4), block sixteen (16), Bushnell's addition to Chicago, by his deed with covenants of warranty against his owd acts, and the claims of all persons lawfully claiming through him, and to assign the certificate of purchase issued by the master in chancery of the United States Circuit court, and now held by him (the said Peckham) of said lot two (2) to the said defendants Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, to have and to hold to them, their heirs and assigns, to their use, and if by law, children of Frank C. and Maria L. Taylor, hereafter born, be entitled to share in such property, then to their use also forever.

STATE OF ILLINOIS, }
COOK COUNTY } ss.

I, Jacob Gross, clerk of the Circuit court of Cook county, and the keeper of the records and files thereof, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain decree made and entered of record on the 25th day of March, A. D. 1881, in a certain cause pending in said court, on the chancery side thereof, between Orville Peckham, complainant, and Frank C. Taylor, Jr., *et al.*, defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 19th day of April, 1881.

JACOB GROSS,
*Clerk.*

[CIRCUIT COURT.]
[COOK COUNTY,]
[ILLINOIS.]

By Mr. SWIFT: I also introduce in evidence as defendants' "Exhibit 42," master's deed from Henry W. Bishop to Frank C. Taylor, Jr., *et al.*, dated November 3, 1881, recorded in book 1,155 of records, page 47, which is as follows:

This indenture made this third day of November, A. D. 1881, between Henry W. Bishop, as master in chancery of the Circuit court of the United States, for the Northern district of Illinois, party of the first part, and Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, of Evanston, county of Cook and state of Illinois, party of the second part, witnesseth:

Whereas, in pursuance of a decree entered on the 29th day of April, A. D. 1880, by the said court, in a certain cause then pending therein, wherein the Franklin Savings Bank, of Pawtucket, Rhode Island, was complainant, and Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine H. Taylor, Robert E. Taylor, Charles H. Mulliken, trustee; Edward W. Russell, successor in trust; Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill, Edward Foster and Adam J. Weckler, as executors of William Lill, deceased; M. C. Baldwin, R. Biddle Roberts and Emil B. Weishaar, as administrator of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska, were defendants, the said master in chancery duly advertised, according to law, the premises hereinafter described, for sale at public auction to the highest and best bidder, for cash in hand, at the hour of eleven o'clock in the forenoon, on the sixteenth day of June, A. D. 1880, at the front door upon LaSalle street of the building in which the said court was formerly held in the city of Chicago, Cook county, Illinois.

And whereas, at the time and place so as aforesaid appointed for said sale, the said master in chancery attended to make the same, and offered said premises for sale at public auction, to the highest and best bidder, for cash in hand, and thereupon the Franklin Savings Bank, of Pawtucket Rhode Island, offered and bid therefor the sum of twelve thousand dollars ($12,000) and that being the highest and best bid offered, said master in chan-

cery accordingly struck off and sold to said the Franklin Savings Bank, of Pawtucket, Rhode Island, for said sum of money, the said premises, and did thereupon sign seal and deliver to said the Franklin Savings Bank, of Pawtucket, Rhode Island, the usual master's certificate therefor.

And whereas, said certificate of sale was assigned to Orville Peckham by said Franklin Savings Bank as appears by an endorsement thereon. And whereas, said Orville Peckham assigned the said certificate to Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, as appears by an indorsement thereon under the hand of the said Orville Peckham.

And whereas, said premises have not been redeemed from said sale, now, therefore, in consideration of the premises the said party of the first part doth hereby convey unto the said party of the second part, their heirs and assigns, the said premises, described as follows, to-wit: Lot 2, in the subdivision of lot 4 in block 16, Bushnell's addition to Chicago, county of Cook, and state of Illinois, together with all and singular the tenements hereditaments and appurtenances thereunto belonging, subject only to the prior lien of a certain decree rendered by the Circuit court of Cook county, Illinois, upon the 20th day of July, A. D. 1874, in a certain cause then pending in said court, in which Henry Gilsdorff, Frederick Baumann and James B. Sullivan were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, The Franklin Savings Bank, Francis S. Howe, Charles H. Mulliken and George Taylor were defendants.

To have and to hold the same, with all the appurtenances thereunto belonging, unto the said party of the second part, their heirs and assigns forever.

Witness the hand and seal of the said party of the first part, the day and year first above written.

HENRY W. BISHOP, [SEAL.]

*Master in chancery of the Circuit court of the United States for the Northern District of Illinois*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK }

I, Edmund Gorvett, a notary public in and for the said county, in the state aforesaid, do hereby certify that Henry W. Bishop, master in chancery of the Circuit court of the United States, for the Northern district of Illinois, who is personally known to me to be the same person whose name is subscribed to the annexed deed of conveyance, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, as such master in chancery, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 3d day of November, A. D. 1881.

[NOTARIAL SEAL] EDMUND GORVETT,
*Notary Public.*

[Endorsed]: State of Illinois, county of Cook, ss. No. 358,-443. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 11th day of November, A. D. 1881, at 10 o'clock A. M., and recorded in book 1,155 of records, on page 47.

JAS. W. BROCKWAY,
*Recorder.*

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit 43," the appearance of Edward W. Russell for certain defendants in the foreclosure suit in the United States court, the *Franklin Savings Bank, of Pawtucket,* vs. *Frank C. Taylor, et al.*, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SEVENTH CIRCUIT AND NORTHERN DISTRICT OF ILLINOIS.

The Franklin Savings Bank, of Pawtucket,
vs.
Frank C. Taylor, Maria L. Taylor, *et al.* } *In Chancery*

I hereby enter the appearance of Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, Francis S. Howe and Edward W. Russell, defendants in the above entitled cause.

EDWARD W. RUSSELL,

*Solicitor for Frank C. Taylor, Maria L. Taylor, Charles H. Mulliken, Francis S. Howe and Edward W. Russell.*

[Endorsed]: Filed August 7, 1876.

WM. H. BRADLEY, *Clerk.*

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit 44," the answer of Maria L. Taylor and Charles H. Mulliken, trustee, defendants in the same cause, which is as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

UNITED STATES OF AMERICA,
NORTHERN DISRICT OF ILLINOIS. } ss.

The Franklin Savings Bank, of Pawtucket, Rhode Island,

*vs.*

Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Charles H. Mulliken, trustee; Francis S Howe, trustee; Edward W. Russell, successor in trust; George S. Carmichael, Harriet K. Carmichael, James C. Grant, John Brice, Michael Byrne, Thomas O'Brien, Robert H. Foss, John L. Beveridge, Gustave Fischer, John W. Doane, John Wright, Patrick J. Towle and John Lill, Edward Foster and Adam J. Weckler, executors of William Lill, deceased; Charles Hoffman, M. C. Baldwin, and R. Biddle Roberts and Emil B. Weishaar, administrators of the estate of John Weishaar, deceased; Ellis S. Chesbrough, Jr., assignee in bankruptcy of said Frank C. Taylor and the State Bank of Nebraska. } *In Chancery.*

*The joint and several answer of Maria L. Taylor and Charles H. Mulliken, trustee, two of the above named defendants, to the bill of complaint of the Franklin Savings Bank, of Pawtucket, Rhode Island, complainants.*

These defendants, Maria L. Taylor and Charles H. Mulliken, trustee, now and at all times hereafter, saving and reserving to themselves, and each of them, all benefit and advantage of excep-

tion or otherwise, that can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, these defendants, severally answering, say, that they deny that they, the said Maria L. Taylor and Charles H. Mulliken, trustee, or either of them, with the said Frank C. Taylor, on or about the 23d day of August, A. D. 1873, or at any other time, applied to or requested said complainant to loan them the sum of $36,000, or any other sum on the security mentioned in said bill of complaint, or on any other security; and these defendants deny that the said complainant did lend or advance to these defendants said sum of $36,000, or any other sum.

And these defendants, further answering, deny that thereupon, or in order to secure the repayment of said sum or of any other sum to said complainant with interest at the rate of nine and a half per cent. per annum, payable half yearly, these defendants with the said Frank C. Taylor, duly executed or delivered to said complainant their four certain promissory notes, all bearing date at Chicago, the said 23d day of August, A. D. 1873, each of said notes being for the sum of $9,000, and payable five years after date at the Fourth National Bank, Chicago, Illinois; or that to each of said principal notes were attached ten coupons of the said Frank C. Taylor and Maria L. Taylor, and Charles H. Mulliken, trustee; all bearing the same date and payable to the same order and at the same place as said principal note, each of said coupons being for $427.50 for six months interest, on the note to which it was attached, said coupons being numbered from one to ten, both inclusive, and payable in order of their numbers, at intervals of six months, without grace, from the date of such principal note until the maturity of the same, or that each of said principal notes, provided, that it and the coupons annexed to it should bear interest after maturity at the rate of ten per cent. per annum, but these defendants admit that with the said Frank C. Taylor, they did execute said notes for the uses and purposes, and in the manner hereinafter set forth, but not as alleged and set forth in said bill of complaint.

And these defendants, further answering, deny that for the purpose of further securing to complainant the repayment of said sum of money, so alleged to have been loaned, as set forth in said bill of complaint, with the interest thereon or any other sum of money with its interest, these defendants with the said Frank C. Taylor at the same time or at any time executed or delivered to the said Francis S. Howe, as trustee, their four certain trust deeds, under

their hands and seals all bearing date the said 23d day of August, A. D. 1873, and made or expressed to be made between the said Gharles H. Mulliken, trustee, Frank C. Taylor and Maria L. Taylor, as party of the first part, and the said Francis S. Howe as party of the second part, or that by the said trust deeds the said party of the first part conveyed to the party of the second part the following lots, pieces or parcels of land situate in the city of Chicago, in the county of Cook, and state of Illinois.

By the first of said trust deeds, lot one (1), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision in the recorder's office of said Cook county, in book 5 of plats, page 24.

By the second of said trust deeds, lot two (2), in said subdivision.

By the third of said trust deeds, lot four (4), of said subdivision.

By the fourth of said trust deed, lot five (5), of said subdivision.

Together with all and singular the tenements, hereditaments and appurtenants thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in and to the same and every part and parcel thereof with the appurtenances, to have and to hold the same unto the party of the second part, but upon the condition and trusts set forth in said bill of complaint, but these defendants admit that they with the said Frank C. Taylor did execute said four (4) above mentioned and described trust deeds for the uses and purposes and in the manner hereinafter set forth, but not as alleged and set forth in said bill of complaint.

And these defendants, further answering, deny that each or said trust deeds, was given for the purpose of securing the payment to said complainant of one of the principal notes for $9,000, above mentioned, or the coupons attached to said note, or the interest thereon as provided in said note.

And these defendants, further answering, say that they do not know and have never been informed save by complainants bill and cannot set forth as to their belief, or otherwise whether the said Frank C. Taylor afterwards, and on or about the 1st day of January, A. D. 1874, applied to and requested said complainant to lend him the further sum of $2,875, on the security hereinafter named or that said complainant complied with such request and did accordingly lend and advance to said Taylor said sum of $2,875, at Chicago, in conformity to and under and to be construed by the laws of the state of Illinois.

And these defendants, further answering, say that they do not know and have never been informed save by complainant's bill and cannot set forth as to their belief, or otherwise whether to secure the repayment of said sum to said complainant, the said Frank C. Taylor thereupon executed and delivered to said complainant his promissory note, dated at Chicago, on said 1st day of January, A. D. 1874, for $2,875, payable to the order of said complainant, two years after date at the Fourth National Bank, of Chicago, and also his four coupons attached to said principal note all dated the same day, payable to the same order and at the place as said principal note and each for $143.75 being for six months interest on said principal note at ten per cent. per annum, which said coupons were numbered from one to four inclusive, and payable in order of their numbers at intervals of six months, without grace, from the date of said principal note until its maturity, and that said principal note and the coupons annexed to it bear interest after maturity at the rate of ten per cent. per annum.

And these defendants, further answering, deny that for the purpose of further or otherwise securing to said complainant the repayment of said sum of $2,875, so alleged to have been loaned as aforesaid with interest thereon as aforesaid, these defendants with the said Frank C. Taylor, also at the time or at any other time executed or delivered to said Francis S. Howe, as trustee, their certain other trust deed under their hands and seals bearing date the said 1st day of January, A. D. 1874, and made or expressed to be made between the said Charles H. Mulliken, trustee, Frank C. Taylor, and Maria L. Taylor as party of the first part, and the said Francis S. Howe as party of the second part, and by said trust deed the party of the first part conveyed to the party of the second part the following lots, pieces or parcels of land situate in the city of Chicago, in the county of Cook, and state of Illinois, to-wit:

Lots one (1), two (2), four (4) and five (5), in the subdivision of lot four (4), in block sixteen (16), Bushnell's addition to Chicago, as shown by the plat of said subdivision, in the recorder's office of said Cook county, in book 5 of plats, page 24. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, claim and demand whatsoever as well in law as in equity of the party of the first part, in and to the same: but these defendants admit that they with the said Frank C. Taylor did execute said last mentioned trust deed for the uses and purposes, and in the manner hereinafter set forth, but not as alleged and set forth in said bill of complaint.

And these defendants, further answering, admit that each of said trust deeds was given for the purpose of securing the payment of the principal note in such trust mentioned, with interest as aforesaid and for the use and benefit of said complainant, when said complainant should loan and advance to these defendants each and all of said above mentioned sums of money, and not before, and contained the proper release of dower and of homestead, and that it was stipulated and agreed in each of said trust deeds that in case of default of any of the payments of principal or interest which such deed was given to secure the whole of such principal sum thereby secured and the interest thereon should at the option of the legal holder of the notes by which such indebtedness was evidenced, become at once due and payable and the premises conveyed by such trust deed might be sold in the same manner and with the same effect as if said indebtedness had matured, and in each of said trust deeds it is provided that in case of the death, resignation or removal from said city of Chicago, or inability to act of the said Francis S. Howe, then the said Edward W. Russell should be and was appointed successor in trust, with like power and authority as the said Howe and the said premises should be vested in said Russell accordingly, and that each of said four trust deeds first above mentioned and which bear date the 23d day of August, A. D. 1873, was duly acknowledged on said last mentioned day by all of the grantors therein and said trust deeds were afterwards and on the 25th day of August, A. D. 1873, but without any right or authority therefor filed for record in the recorder's office of Cook county, Illinois, and duly recorded therein, the first of said trust deeds, in book 303 of records, at page 227, the second in book 306 of records, at page 207, the third in book 242 of records, at page 614, and the fourth in book 214 of records, at page 609, as by the records of said trust deeds now remaining in said office, and also by the certificates of James Stewart, recorder of said county, endorsed upon said trust deeds sufficiently appears; and that the last mentioned of said trust deeds, the one bearing date the 1st day of January, A. D. 1874, was afterwards, to-wit: On the 8th day of January, A. D. 1874, without any right or authority therefor filed for record in the recorder's office of said Cook county, and duly recorded therein in book 338 of records, at page 159, as by the record of said trust deed now remaining in said office and by the certificate of James Stewart, recorder of said county, endorsed upon said trust deed sufficiently appear.

And these defendants, further answering, deny that default has been made in the payment of the coupons numbered 3, 4 and 5, attached to each of said principal notes of $9,000, which coupons became due, as follows: Four on February 23, A. D. 1875;

four on August 23, 1875, and four on February 23, 1876, or that by reason of such default, complainant, who claims to be the legal holder and owner of said principal notes and coupons, has the right to declare the whole of said principal notes due and payable.

And these defendants, further answering, deny that default has been made in the payment of the two last maturing coupons attached to said principal note, for $2,875, and that said principal note has, itself, by the terms thereof, become due and payable, or that by reason of the premises there is now due to said complainant from these defendants, or either of them, the following sums:

$1,710 and interest from February 23, 1875, at 10 per cent.

$1,710 and interest from August 23, 1875, at 10 per cent.

$1,710 and interest from February 23, 1876, at 10 per cent.

$36,000 and interest from February 23, 1876, at 9½ per cent., and from the said Frank C. Taylor, the following sums:

$143.75 and interest from July 1, 1875, at 10 per cent.

$143.75 and interest from January 1, 1876, at 10 per cent.

$2,875 and interest from January 1, 1876, at 10 per cent, or that all of said sums still remain unpaid.

And these defendants, further answering, admit that in a certain action in the Circuit court of Cook county, in said state of Illinois, brought to establish a mechanics lien upon the premises conveyed by said trust deed and other premises, in which action Henry Gilsdorff, Frederick Baumann and Edward Baumann and James B. Sullivan were petitioners, and Frank C. Taylor, Maria L. Taylor, Ira Scott, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor, Alexander Taylor, Francis S. Howe, Charles H. Mulliken and George Taylor were defendants, it was decreed that said petitioners should recover out of the premises in said petition mentioned, as follows: The said Henry Gilsdorff the sum of $6,585.77; and the said Frederick Baumann and Edward Baumann the sum of $1,120; and the said James B. Sullivan the sum of $1,282.91, and their costs, and that said decree should be a lien upon said premises for said amounts, and that said decree is a valid and first lien upon the premises conveyed by the trust deeds mentioned in this bill of complaint, but these defendants deny that the four trust deeds above mentioned are valid or second or any lien upon said lot one (1), lot two (2), lot four (4) and lot five (5) respectively, in the subdivision of lot (4) four, in block sixteen (16), in Bushnell's addition to Chicago, subject only to the lien of said decree, or that the last mentioned of said trust deeds, to-wit: the trust deed bearing date January 1, A. D. 1874, is a valid or third or any lien upon said lots one (1), two (2), four (4) and five (5), in the said subdivision.

And these defendants, further answering, deny that since the making of said five trust deeds to said Howe, but not for the benefit of said complainant, the premises so conveyed thereby have greatly depreciated in value or are now an insufficient security for the amount of money claimed to be due to said complainant as hereinbefore set forth; that there are dwelling houses on each of said four lots and other buildings; that said houses and buildings have been rented by the said Frank C. Taylor to certain persons to said complainant unknown, and that said Taylor is collecting the rents from said tenants and appropriating the same to his own use, to the manifest injury of said complainant. But these defendants admit that the said Frank C. Taylor has since the execution of said notes been adjudicated bankrupt by the District court of the United States for the Northern district of Illinois, and the said Ellis S. Chesbrough, Jr., has been apppointed assignee of said bankrupt, and these defendants deny that said Maria L. Taylor is insolvent, or that the amount of any deficiency which may remain after the sale of said premises cannot be collected from said Frank C. Taylor or Maria L. Taylor, or either of them.

And these defendants, further answering, admit that they have a large and very valuable interest in said premises mentioned in said trust deeds, but these defendants deny that these defendants ought to pay any sum or sums whatever to said complainant, or that there is any due said complainant by these defendants.

And these defendants, further answering, admit that the said Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, are minors, and children of the said Frank C. Taylor and Maria L. Taylor.

And these defendants, further answering, show and charge the fact to be that for a long time prior to and on the said 23d day of August, A. D. 1873, the said Frank C. Taylor had been and was the agent of said complainant, and engaged in transacting all the business of said complainant as its general and special agent, in the city of Chicago, and that as such agent of said complainant he represented to these defendants that if they would with him execute the promissory notes and deeds first mentioned and described in said bill of complaint as having been executed and dated on said 23d day of August, 1873, he, the said Frank C. Taylor, would obtain said sums of money thereby secured from said complainant and pay said sums of money so obtained upon said securities to these defendants, to be used in making improvements upon the premises mentioned and described in said trust deeds.

These defendants, further answering, show and charge the fact to be that in pursuance of the said inducements and representa-

tions of the said Frank C. Taylor as the agent of complainant, these defendants executed and delivered to said Frank C. Taylor said trust deeds and promissory notes last above mentioned, but that these defendants nor either of them did not nor have not received said sums of money or any part thereof from the said complainant or from its agent, the said Frank C. Taylor, or from any other person or persons whatsoever, and these defendants nor either of them, have not at any time ever received any consideration whatsoever from said promissory note or trust deeds last mentioned, or any or either of them.

These defendants, further answering, show and so charge, as they are informed and believe that some portion of said sums of money so alleged to be secured by said trust deeds, four (4) in number, dated the said 23d day of August, 1873, was used and invested by the said Frank C. Taylor in making improvements upon the premises described in said four trust deeds so dated as aforesaid, and that when the just amount and figures of said sums of money so used in said improvements has been lawfully ascertained in accordance with the practice of this court, these defendants are willing to repay said complainants for said sums so lawfully ascertained to be due.

And these defendants further show, and so charge, upon information and belief tha the balance of said sums of money not used in said improvements was used by the said Frank C. Taylor in settling with said complainants as its agent, and that these defendants nor either of them have ever in any way been benefitted by the same.

And these defendants, further answering, show and so charge e fact that on information and belief that the said promissory note ted the said 1st day of January, 1874, was executed and delivered by the said Frank C. Taylor to said complainant for the sole and only purpose, and for the sole and entire consideration of settling the accounts of the said Frank C. Taylor with said complainant as its said agent, and that said complainant paid no money therefor or thereon, and that these defendants never received any benefit therefrom.

And these defendants, further answering, show and charge the fact to be that the said Frank C. Taylor being then the agent of said complainant, represented to these defendants, as such agent, that if they would with him execute the trust deed last mentioned nd described in the said bill of complaint as having been executed and dated said 1st day of January, 1874, to secure the payment of his said promissory note bearing even date therewith, he, the said Frank C. Taylor as such agent of complainant, would obtain the sum of money thereby secured from said complainant, and

pay said sum of money so obtained upon said last mentioned security to these defendants, to be used in making improvements upon the premises mentioned and described in said last mentioned trust deeds, and entirely withheld from these defendants all and any information or knowledge that said note last described, as dated January 1, 1874, was to be used by him, the said Frank C. Taylor as such agent of said complainant, together with said last mentioned trust deed in settling his accounts with the said complainant as its agent.

These defendants, further answering, show and charge the fact to be that in pursuance of the said inducements and representations of the said Frank C. Taylor, as the agent of said complainant, these defendants executed and delivered to said Frank C. Taylor said trust deed last above mentioned, but that these defendants nor either of them, did not nor have not received said sums of money or any part thereof from said complainant or from its agent, the said Frank C. Taylor, or from any other person or persons whatsoever, and these defendants nor either of them have not at any time ever received any consideration whatsoever for said promissory notes or trust deed last mentioned or any or either of them, or that said premises have in any way been benefited or improved from the execution and delivery of said last mentioned trust deed.

And these defendants, further answering, show and charge the fact to be that said Charles H. Mulliken, trustee, had no right, power or authority by virtue of said trust deed to sign said promissory notes or trust deeds or any or either of them, and that his execution thereof is null and void, as will more fully and at large appear by reference to a certain decree entered in the Superior court of Cook county, on the 19th day of August, 1873, in a certain cause then pending in said last named court on the chancery side thereof, wherein the said Frank C. Taylor, *et al.*, were complainants, and the said Ira Scott, *et al.*, were defendants.

And these defendants, further answering, show and charge the fact to be that for a long time prior to and at the time of the execution and delivery of all of said trust deeds set forth in said bill of complaint, and thence neither the said defendants, Frank C. Taylor and Maria L. Taylor, did not have, and have not now, any title or estate whatsoever in said premises described in all or any of said trust deeds, and could not, by virtue of said trust deeds, convey to said complainant any title or interest or estate whatsoever in all or any of said premises described in all or any of said trust deeds.

And these defendants, further answering, show and charge the fact to be that by the laws of the state of Massachusetts from which said complainant received its charter, and under which laws said complainant acted in advancing any and all the sums of money so set forth in said bill of complaint, the interest demanded by said complainant on the indebtedness in said bill of complaint was excessive, usurious and unlawful, and these defendants claim that the benefits of any and all laws of said state of Massachusetts relating to usurious contracts be applied on their behalf to all and each of the divers contracts, notes and trust deeds set forth in said bill of complaint.

And these defendants, further answering, deny that the complainant is entitled to the relief or any part thereof in the said bill of complaint demanded, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MARIA L. TAYLOR,
CHARLES H. MULLIKEN, Trustee,
*Defendants.*

By E. G. ASAY,
*Their Solicitor*

E. G. ASAY,
*Solicitor for Maria L. Taylor and Charles H. Mulliken, Trustee, Defendants.*

[Endorsed]: Filed Oct. 20, 1876.

WM. H. BRADLEY, *Clerk*

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit 45," the replication to said answer in the same cause, which is as follows:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN EQUITY.

*The replication of the Franklin Savings Bank, of Pawtucket, Rhode Island, to the joint answer of Maria L. Taylor and Charles H. Mulliken, trustee, and to the joint answer of James C. Grant and John Price, and to the separate answer of M. C. Baldwin, defendants, to the bill of complaint of this repliant against said defendants, impleaded with Frank C. Taylor and numerous other defendants:*

This repliant saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto says, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed and denied is true. All which matters and things this repliant are and will be ready to aver and prove as this Honorable court shall direct, and prays as in and by its said bill it has already prayed.

GRANT & SWIFT,
*Solicitors for Complainant.*

[Endorsed]: Filed November 6, 1876.

WM. H. BRADLEY,
*Clerk.*

By agreement examination adjourned subject to call of counsel

Counsel present as before; met pursuant to agreement.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 46," certified copy of an order of the Circuit court, of Cook county, appointing a guardian *ad litem* of the infant defendants in the suit of *Gildorff, et al.*, v. *Scott, et al.*, which is as follows:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Pleas, before the Honorable the Judges of the Circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and state, on the third Monday (being the sixteenth day) of February, in the year of our Lord, one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

Present: Honorable William W. Farwell, Chief Justice of the Circuit court of Cook county, state of Illinois.

E. S. WILLIAM,
HENRY BOOTH,
JOHN G. ROGERS,
LAMBERT TREE,
*Judges.*

CHARLES H. REED,
*States Attorney.*

TIMOTHY M. BRADLEY,
*Sheriff.*

Attest: JACOB GROSS,
*Clerk.*

Be it remembered that on the 21st day of February, A. D. 1874, the following, among other proceedings, were had and entered on record in said court, to-wit:

8554
4386
Henry Gilsdorff, *vs.* Ira Scott, Frank C. Taylor, Maria L. Taylor, *et al.* } *Mechanics' Lien.*

And now at this day, on motion, Rufus C. Hall is hereby appointed guardian *ad litem* for infant defendants, Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Henry Best, clerk of the Circuit court of Cook county, and the keeper of the records and files thereof, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order made and entered of record on the 21st day of February, A. D. 1874, in a certain cause lately pending in said court, on the common law side thereof, between Henry Gilsdorff, plaintiff, and Ira Scott *et al.*, defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 12th day of November, 1889.

[COURT SEAL.]

HENRY BEST,
*Clerk.*

By. Mr SWIFT: I now offer in evidence as defendant's "Exhibit 47," a certified copy of an order of the Superior court of Cook county, appointing a guardian *ad litem* in the case of *Taylor* vs. *Taylor*, in chancery, number 42,146, which is as follows:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Pleas, before the Honorable Samuel M. Moore, Chief Justice of the Superior court of Cook county, in the state of Illinois, holding a branch court of said court, at a regular term of said Superior court of Cook county, begun and holden at the court house, in the city of Chicago, in said county and state, on the first Monday, being the seventh day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America, the one hundred and third.

Present: The Honorable Samuel M. Moore, Chief Justice of the Superior court of Cook county.

LUTHER LAFLIN MILLS,
*States Attorney.*

CHARLES KERN,
*Sheriff of Cook County.*

Attest: JOHN J. HEALY.
*Clerk.*

Be it remembered that heretofore, to-wit: On the ninth day of October, in the year of our Lord one thousand eight hundred and seventy-eight, the same being on one of the days of October Term of the Superior court of Cook county, the following, among other proceedings, were had in said court and entered of record, to-wit:

Frank C. Taylor, Jr., *et al.*,
42146 *vs.* } *Bill.*
Frank C. Taylor, *et al.*

This day comes into open court Edward O. Brown, Esquire, solicitor of record for the complainants herein, and suggests to the court the death of Francis S. Howe, Esq., one of the defendants herein, and it is ordered that this suit do abate as to said defendant.

And it appearing to the court that due personal service of process of summons issued in this cause has been had on the defendants Alexander Taylor and Robert C. Taylor for more than two days before the first day of this Term and that said defendants are minors, under age, on motion of complainants it is ordered that William Coffeen be, and is hereby appointed guardian *ad litem* for said infant defendants, to appear and defend this cause on their behalf.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I. Patrick McGrath, clerk of the Superior court of Cook county, in and for the state of Illinois, do hereby certify the above and the foregoing to be a true, perfect and complete copy of a certain order made and entered of record in said court in a certain cause lately pending in said court on the chancery side thereof, wherein Frank C. Taylor, Jr., *et al.*, complainants, and Frank C. Taylor, *et al.*, defendants.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Chicago, this 11th day of November, A. D. 1889.

[COURT SEAL.]

P. MCGRATH.
*Clerk.*

By Mr. SWIFT. I now offer in evidence as defendant's "Exhibit 48," certified copy of an order of the Superior court of Cook county, appointing a guardian *ad litem* in the case of *Taylor, et al.*, v. *Taylor, et al.*, in chancery, No. 44,331, which is as follows:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Pleas, before the Honorable Samuel M. Moore, Chief Justice of the Superior court of Cook county, in the state of Illinois, holding a branch court of said court, at a regular term of said Superior court of Cook county, begun and holden at the court house, in the city of Chicago, in said county and state, on the first Monday, being the 7th day of October, in the year of our Lord, one thousand eight hundred and seventy-eight, and of the Independence of the United States of America, the one hundred and third.

Present: The Honorable Samuel M. Moore, Chief Justice of the Superior court of Cook county.

LUTHER LAFLIN MILLS,
*States Attorney.*

CHARLES KERN,
*Sheriff of Cook County.*

Attest: JOHN J. HEALY,
*Clerk*

Be it remembered that heretofore, to-wit: On the 9th day of October, in the year of our Lord one thousand eight hundred and seventy-eight the same being one of the days of the October Term of the Superior court of Cook county, the following, among other proceedings, were had in said court and entered of record, to-wit:

Frank C. Taylor, Jr., *et al.*, }
44331 *vs.* } *Bill.*
Frank C. Taylor, *et al.* }

This day comes into open court Edward O. Brown, Esq., solicitor of record for the complainants herein, and suggests to the court the death of Francis S. Howe, Esq., one of the defendants herein, and it is ordered that this suit do abate as to said defendant.

And it appearing to the court that due personal service of process of summons issued in this cause has been had on the defendant, Robert C. Taylor, for more than ten days before the first day of this Term, and that said defendant is a minor, under age, on motion of complainants it is ordered that William Coffeen be, and he is hereby appointed guardian *ad litem* for said infant defendant, to appear and defend this cause in his behalf.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Patrick McGrath, clerk of the Superior court of Cook county, in and for the state of Illinois, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order made and entered of record in said court, in a certain cause lately pending in said court on the common law side thereof, wherein Frank C. Taylor, Jr., *et al.*, complainants, and Frank C. Taylor, *et al.*, defendants

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Chicago, this 11th day of November, A. D., 1889

[COURT SEAL.] P. MCGRATH,
*Clerk.*

By Mr. SWIFT: I now offer in evidence a defendant's "Exhibit 49," e original bill of *Frank C. Taylor, Jr., et al.*, v. *Ira Scott, et al.*, mmenced in the Superior court of this county, and removed by the e ndant, the Franklin Savings Bank, to the Federal court of this uit, which is as follows:

By Mr. KENDALL: Objected to as incompetent, irrelevent and immaterial.

By the MASTER: Admitted subject to the objection.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

IN THE SUPERIOR COURT OF THE SAID COUNTY.

TO THE HONORABLE THE JUDGES OF THE SUPERIOR COURT OF COOK COUNTY IN CHANCERY SITTING.

Humbly complaining, showeth unto your Honors, your orators Frank C Taylor, Jr., Maria Louise Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C. Taylor, infants under the age of eighteen years by their next friend John Q Wells, that heretofore to-wit: On or about the 13th day of June in the year 1870, one Maria Louise Taylor, the mother of your orators, being seized in fee simple of the following described land situate in the city of Chicago, in said county of Cook, to-wit: That part of block sixteen (16) in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the east line of Dearborn street three hundred feet north of the southwest corner of said block, thence running north on the east line of Dearborn street, one-hundred and three (103) feet more or less to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet more or less; and thence west parallel with Maple street one hundred and fifty (150) feet to the place of beginning, the same being lot four (4) in the plat of subdivision of block sixteen (16), Bushnell's addition to Chicago, recorded in the recorder's office of said county in book 165 of maps, on page 51, together with her husband, Frank C. Taylor, Sr., the father of your

orators, executed and delivered a certain deed of conveyance under their hands and seals, whereby they conveyed the said land to one Ira Scott, of the said city of Chicago, in trust, upon the following specified trusts namely.

Firstly: For the use and benefit of the said Maria Louise Taylor, and the children of the said Frank C. and Maria Louise Taylor, to be used and occupied by them as a homestead or place of residence, subject however to the trusts and uses hereinafter contained. It being, however, expressly provided and understood that the improvements now standing on said premises may be added to, altered or removed, and new buildings erected thereon, provided always there shall be no lien, incumbrance or charge created thereby on said premises, and it is further provided that the whole or a portion of said premises may be used for the purpose of deriving a revenue therefrom, as is hereinafter provided, and that a portion only of said premises may be used as such homestead as aforesaid. And it is also hereby further provided that said Ira Scott, trustee, and his successor in trust shall not be charged with a duty of paying the taxes and assessment that may be levied and assessed on said premises so long as the whole of said premises shall be used as a homestead and so long as no sufficient rents, issues, or profits thereupon or any portion thereof shall be received by said Ira Scott, or his successor in trust.

Secondly: And upon this further trust, namely: The said Ira Scott or his successors in trust shall bargain, sell and convey a portion of said premises for the purpose of procuring funds to build upon and improve the remainder thereof during the joint lives of the said Frank C. and Maria Louise Taylor upon their joint written request and such request shall be signified by their joining with such trustee in the execution of the deed or deeds of conveyance. Or in the event of the death of said Frank C. Taylor, said Maria Louise Taylor and a child or children of them surviving until the youngest of such children then living shall become of age, or should thereafter all of such children die before such youngest child should attain his or her majority, then until such event the said Ira Scott or his successors in trust may at any time when in the judgment of said trustee it would be for the best interests of said Maria Louise Taylor and said children, bargain, sell and convey by full and proper deed or deeds of conveyance such a portion of said premises for such price or prices and upon such terms as to said Ira Scott or his successors in trust, shall seem fit and proper for the purpose of obtaining funds to build upon and improve the remainder of said premises, and said Ira Scott or his successors in trust shall at once with the proceeds of said sale erect on that portion of said premises remaining unsold, such buildings and improvements as said Frank C. Taylor and Maria Louise Taylor, jointly, shall direct, or in case said Maria Louise Taylor shall survive, as last aforesaid, as the said Ira Scott or his successors in trust shall deem best, provided always that no charge, lien or incumbrance on said premises or any portion thereof shall be thereby created by said Ira Scott or his successors in trust.

Thirdly: And said Ira Scott and his successors in trust are also hereby authorized and empowered to lease said premises or any portion thereof, provided no lease shall be made for a longer period than three years, and to collect and receive the rents, issues and profits thereof during the joint lives of the said Frank C. and Maria Lousie Taylor, upon their joint written request, and such request shall be signified by their joining with such trustee in the execution of the leases, or, in the event of the death of said Frank C. Taylor, the said Maria Louise Taylor and a child or children of them surviving, until the youngest of such children then living become of age, or should all of said children thereafter die before such youngest child shall have attained his or her majority, then until such event, the said Ira Scott or his successors in trust may at the discretion of such trustee lease said premises then remaining unsold or any portion thereof and collect and receive the rents, issues and profits thereof, provided that the same are not used as a homestead as aforesaid, and further provided that no such lease shall be made for a longer period than three (3) years; and the said rents issues and profits so collected and received, the said Ira Scott and his successors in trust shall apply and pay over as follows: 1st—Out of the same shall first be paid all costs herein provided for and all taxes and assessments that shall be levied or assessed on said premises or any portion thereof which shall remain unsold, as the same shall become due and payable; 2d, during the joint lives of the said Frank C. and Maria Louise Taylor all of the remainder of said rents, issues and profits after the payment of said costs, taxes and assessments shall be paid to said Maria Louise Taylor for her sole use and benefit upon her sole and separate receipt in writing therefor. 3d—In the event of the death of the said Frank C. Taylor, the said Maria Louise Taylor and a child or children of the said Frank C. and Maria Louise Taylor him surviving, for, during and until the youngest child then living shall become of age, or should thereafter all of said children die before the youngest child then living shall have attained his or her majority then, until such event, the said Ira Scott or his successors in trust shall pay to the said Maria Louise Taylor out of the remainder of said rents, issues and profits, if any there shall be, after deducting said costs, taxes and assessments, the sum of $3,000 per annum, or the whole of such remainder should it not exceed that amount, upon her sole and separate receipt in writing therefor, and until the youngest child shall become of age, the residue and remainder of said rents, issues and profits, if any there shall be, the said Ira Scott or his successors in trust shall, from time to time, as the same shall be received, equally divide among and pay to all of said children their guardian or guardians, if any. 4th—In the event of the death of said Maria Louise Taylor, the said Frank C. Taylor and a child or children of the said Frank C. and Maria Louise Taylor her surviving, for during and until the youngest child then living shall become of age, or should all of said children thereafter die before such youngest child shall have attained his or her majority, then, until such event, the said Ira Scott, or his successors in trust, after deducting

the payments for taxes, assessments and costs as herein provided, shall, from time to time, as the same shall be received, equally divide among and pay to all of said children, or their guardian or guardians, if any, the remainder of said rents, issues and profits.

Fourthly: And these presents are executed upon the further trusts following, namely:

1st—In the event that should the youngest child then living of said Frank C. and Maria Louise Taylor attain his or her majority after the death of said Frank C. Taylor and which said Maria Louise Taylor shall be still living, the said Ira Scott, or his successors in trust, shall in that event, bargain, sell and convey by proper deed or deeds of conveyance all of said premises which shall then remain unsold at such price or prices and on such terms as shall to said Ira Scott or his successors in trust seem best, and out of the proceeds of such sale or sales said Ira Scott or his successors in trust shall first retain an amount (if the same shall be sufficient, or the whole if insufficient), which being invested in bond or mortgage as hereinafter provided for shall bring an annual income of three thousand dollars ($3,000) and the remainder of the proceeds of such sale or sales, if any there shall be, the said Ira Scott or his successors in trust shall divide among and equally pay to the said children, their heirs or executors fully and absolutely *per stripes* and not *per capita* and the amount so as aforesaid retained the said Ira Scott or his successors in trust shall invest in bond and mortgage upon unincumbered real estate in said city of Chicago in the name of and as such trustee, and the interest or income derived therefrom the said Ira Scott or his successors in trust shall pay to the said Maria Louise Taylor as the same shall be received during the remainder of her natural life, and upon her death the said Ira Scott or his successors in trust shall assign over, transfer and surrender the said bonds and mortgages absolutely to the heirs at law of the said Frank C. Taylor according to the statute of descent. 2nd—In the event of the death of the said Maria Louise Taylor, leaving her surviving the said Frank C. Taylor and a child or children of the said Frank C. and Maria Louise Taylor, then the said Ira Scott or his successors in trust shall either continue to hold said premises in trust during the joint life time of the said Frank C. Taylor and any of said children for a homestead as aforesaid, or to lease the same and collect the rents, issues and profits as hereinafter provided, upon the written request to lease of said Frank C. Taylor, which request shall be expressed by his joining in the execution of the leases— or said Ira Scott, or his successors in trust shall bargain, sell, and convey that portion of said premises which shall then remain unsold, at the written request of said Frank C. Taylor, which request shall be expressed by the said Frank C. Taylor joining in the execution of the deed or deeds of conveyance, and the proceeds of such sale the said Ira Scott, or his successors in trust shall reinvest in unincumbered real estate in the said city of Chicago, or in bond and mortgage secured by unincumbered real estate in said city in the name of and as such

trustee, and hold the same under the trust and during the joint lives of said Frank C. Taylor, and any of said children, after paying all costs, taxes, and assessments as herein provided, the said Ira Scott or his successors in trust shall equally divide among and pay the remainder of said rents, issues and profits as they shall be received to said children or their heirs or executors *per stripes* and not *per capita*, and upon the death of Frank C. Taylor, the said Ira Scott, or his successors in trust shall by proper deed or deeds of conveyance assign and convey absolutely and in fee simple, such portion of said premises as shall then remain unsold, or the premises which shall have been purchased as aforesaid to said children, their heirs or executors as tenants in common in equal proportions, and they shall take *per stripes* and not *per capita*, or if the said premises shall have been sold and the proceeds invested in bond and mortgage as aforesaid, then upon the death of said Frank C. Taylor said Ira Scott or his successors in trust shall assign over and transfer said bonds and mortgages to said children, their heirs or executors fully and absolutely, share and share alike, and they shall take *per stripes* and not *per capita*. Third: In the event that the youngest child of said Frank C and Maria Louise Taylor shall become of age after the death of both parents, said Ira Scott or his successors in trust shall convey, by proper deeds of conveyance in fee simple discharged of the trusts herein created, the whole of said premises which shall then remain unsold to said children, their heirs or executors as tenants in common in equal proportions, and they shall take *per stripes* and not *per capita*. Fourth: In the event of the death of said Maria Louise Taylor, the said Frank C. Taylor, but no child of them her surviving and also in the event of the death of all the said children, subsequent to the death of said Maria Louise Taylor, the said Frank C. Taylor them and her surviving, the said Ira Scott or his successors in trust shall at once convey in fee simple, discharged of all trusts hereby created, the above described premises, or so much thereof as shall then remain unsold, by proper deed or deeds of conveyance to said Frank C. Taylor and his heirs and assigns forever. Fifth: In the event of the death of said Frank C. Taylor, or leaving him surviving the said Maria Louise Taylor, but no children of the said Frank C. and Maria Louise Taylor, and also in the event of the death of all of said children, before the youngest child thereof shall have become of age and subsequent to the death of said Frank C. Taylor, the said Maria Louise Taylor him and them surviving the said Ira Scott, or his successors in trust shall bargain, sell and convey all of said premises which shall then remain unsold, by proper deed or deeds of conveyance for such price or prices and upon such terms as shall to said Scott, or his successors in trust seem best and proper, and out of the proceeds of such sale or sales the said Ira Scott or his successors in trust shall first retain an amount (if the same shall be sufficient and the whole of the same shall be insufficient), which being invested in bond and mortgage as hereinafter provided for, shall bring an annual income of three thousand dollars ($3,000), and the remainder of the proceeds of such sale

or sales, if any there shall be, the said Ira Scott or his successors in trust shall pay over to the heirs at law of Frank C. Taylor, who shall take the same according to the statute of decent, and the amount so as last aforesaid retained, the said Ira Scott or his successors in trust shall invest in bond and mortgage upon unincumbered real estate in said city of Chicago, in the name of and as such trustee, and the interest derived therefrom and the said Ira Scott or his successors in trust shall pay to the said Maria Louise Taylor as the same shall be received during the remainder of her natural life, and upon the death of the said Ira Scott or his successors in trust shall assign over, transfer and surrender the said bonds and mortgages absolutely to the heirs at law of said Frank C. Taylor according to the statute of decent, and these presents are also executed upon this further trust namely: during the joint lives of the said Frank C. Taylor, Maria Louise Taylor and the said Ira Scott or his successors in trust, shall bargain, sell and convey the whole or a portion of said premises, or so much thereof as may then remain unsold, free and clear from all trusts hereby created upon the joint written request of the said Frank C. and Maria Louise Taylor joining in the execution of such deed or deeds with said Ira Scott or his successors in trust and the avails or proceeds of such sale or sales, said Ira Scott or his successors in trust shall reinvest in unincumbered real estate in the city of Chicago, or upon bond and mortgage on unincumbered real estate in said city of Chicago in such a way as the said Frank C. and Maria Louise Taylor may by their joint instructions in writing direct, and the same shall be held upon the same trustee and subject to the same limitations as are herein and hereby declared and set forth. It is hereby further understood and agreed that said Ira Scott and his successors in trust shall be respectively allowed to deduct and retain from the rents, issues and profits received by them respectively an amount equal to five per cent. thereof, and the same shall be received by them in full payment and satisfaction of any and all charges for fees and services by said trustees respectively.

That in and by said deed it was provided, that in the case of the death, absence, inability or refusal to act of the said Ira Scott, then Francis B Peabody of said Chicago should be and he was by said deed appointed and made successor in trust to the said Ira Scott with like power and authority; and said land and premises as should then remain unsold or whatever property or assests said Ira Scott at the time of said succession should hold under and by virture of said trusts should thereupon become wholly vested in such successor in trust for the uses and purposes in said deed set forth and declared.

All of which will more fully and at large appear by reference to said deed now in the possession of your orators ready to be produced and proved as your Honors shall direct, and to which for greater certainty your orators pray leave to refer

That afterwards to-wit, on or about the 13th day of June, A. D. 1871, the said deed was duly acknowledged by the said Maria Louise Taylor and Frank C. Taylor before Timothy J. Mapes a notary pub-

lic in and for said city of Chicago, in said county of Cook, as by his certificate as such notary endorsed upon said deed under his hand and notarial seal, will more fully appear.

That afterwards to-wit: On the 15th day of June, A. D. 1871, said deed was fully filed for record and was recorded in the recorder's office for said county of Cook, in book 673 of deeds, page 1, as by the certificate of Norman T. Gassette, the recorder of said county endorsed thereon and signed by the said recorder, will appear.

And your orators further show unto your Honors that afterwards, to-wit: On or about the 9th day of October, A. D 1871, the record of said deed of trust was destroyed by fire. That on or about the 30th day of January, A D. 1873, the said Frank C. Taylor, senior, and Maria L. Taylor, his wife, filed a bill in this court for the purpose of establishing and confirming said deed and the title of said trustee and of all parties interested thereunder in and to said land and premises, therein setting out a supposed copy in substance of said deed of trust and alleging that the original of said deed was lost or destroyed by said fire Whereupon such proceedings were had, that on or about the 29th day of March, A. D 1873, a decree was entered in said cause in accordance with the prayer of said bill establishing said copy as and for the original of said deed etc., all of which will more fully and at large appear by reference to the record of said suit numbered 42 146 in this court, to which your orators pray leave to refer, etc

That afterwards, to-wit: On or about the 13th day of June, A. D 1873, the said trustee, Ira Scott, together with the said Frank C Taylor and wife, made a subdivision of the land in said deed of trust described, into five lots numbered respectively one (1), two (2), three (3), four (4), and five (5), which said subdivisions was duly platted and the map thereof recorded in the recorder's office of said county on or about the 5th day of July A. D 1873, in book 5 of maps, page 24.

That afterwards, to-wit: On or about the 23d day of July A. D 1873, the said Frank C Taylor and Maria L. Taylor, his wife, filed a petition in this court praying for the appointment of a new trustee in place of the said Ira Scott and Francis B. Peabody, both of whom had declined to act as such trustee and had resigned said trust by written documents, now on file in this court, in said last mentioned cause and that thereupon such proceedings were had: that on or about the 19th day of August, A. D. 1873, a decree was entered therein, by which one Charles H. Mulliken, of Chicago, was appointed and made successor in trust to the said Ira Scott and Francis B. Peabody under said trust deed, and during that, the said Mulliken should become fully vested in all of said premises and trust estate with all the powers in and by said trust deed conferred and subject to all the limitations therein and thereby imposed upon said Ira Scott as such trustee, etc., and that the said Ira Scott and Francis B. Peabody, be fully relieved and discharged from all the trusts imposed upon them by said trust conveyance, and fully acquitted and discharged from any and all liability to said trust estate as such trustee, and that upon request, they, the said trustees, should execute, acknowledge and deliver to

the said Charles H. Mulliken, as their successor in trust, a full release, quit-claim and conveyance of all right, title and interest they had acquired by said trust conveyance in and to said land and premises, all of which will more fully and at large appear by reference to the record of this court in said suit, which said suit is numbered 44,331 on the general docket of this court.

That, pursuant to said decree, the said Ira Scott and Francis B. Peabody executed, acknowledged and delivered to the said Charles H. Mulliken, as their successor in said trust, a deed of conveyance of all right, title, interest, claim, or demand whatsoever acquired by them, the said Scott and Peabody, through or by said deed of trust in and to the premises therein described, which said deed is now in the possession of.

That afterwards the said Charles H. Mulliken as trustee, as aforesaid, pursuant to the powers in and by said trust deed given to such trustee, sold and conveyed said lot three (3) in the subdivision of said lot four (4), block 16 Bushnell's addition to one Julia S. Taylor, by deed dated November 10, 1873, in which deed the said Frank C and Maria L. Taylor, joined for the purpose of signifying their request in accordance with the provisions of said trust deed.

That afterwards to-wit: On or about the 4th day of March, A. D. 1879, the decree of this court in said suit numbered 42,146 establishing and confirming said deed of trust, was upon a bill of review filed therein reviewed, reversed and set aside, and the original bill therein filed on the 30th day of January, A. D. 1873, was dismissed, the original of said deed of trust having been found and produced in court, all of which will more fully appear by reference to the record of said suit now in this court, and to which your orators pray leave to refer.

That afterwards, to-wit: On the said 4th day of March, A. D. 1879, the decree in said suit in the Superior court, numbered 44,331, appointing said Mulliken trustee, etc., was, upon a bill of review being filed therein, reviewed, reversed and set aside, and the bill in said cause filed on the 23d of July, 1873, was dismissed; all of which will more fully and at large appear by reference to the record of said cause now in this court, and to which record your orators pray leave to refer.

And your orators further show unto your Honors, that after the appointment of said Mulliken as trustee, aforesaid, and prior to the dismissal of said bill in the cause wherein he was so appointed, to-wit: On or about the 23d day of August, 1873, the said Charles H. Mulliken, as trustee as aforesaid, joined with the said Frank C. Taylor, Sr., and Maria L. Taylor, Sr., in the execution of four trust deeds, in the nature of mortgages, whereby they undertook to convey to one Francis S. Howe (since deceased), the said lots numbered respectively, one (1), two (2), four (4) and five (5), to secure the payment of four promissory notes, of the said Frank C. Taylor and Maria L. Taylor and the said Mulliken, trustee, for $9,000 cash, payable to the Franklin Savings Bank, of Pawtucket, Rhode Island, and that

afterwards the said Franklin Savings Bank filed its bill of complaint in the Circuit court of the United States, for the Northern district of Illinois, praying for a decree of foreclosue of said trust deeds and a sale of said premises, and such proceedings were had therein; that a decree of foreclosure and sale was afterwards entered in said cause under and by virtue of which the said lots one (1), two (2), four (4) and five (5) were sold by the master in chancery of said court, to the said Franklin Savings Bank; and that afterwards, pursuant to said sale deeds were issued by said master of said lots 1. 4 and 5, to said bank. But your orators are advised that so far as their interests in said land were concerned, and so far as the title to said land so held in trust, as aforesaid, under said first mentioned deed of trust is concerned, said trust deeds and all proceedings in the said Circuit court of the United States and the decree therein entered, and the sale made in pursuance thereof are inoperative and void, said trustee having no power or authority to incumber said trust estate of your orators in said land, and that said court was wholly without jurisdiction to decree a sale of your orators estate in said land.

And your orators further show unto your Honors that by reason of the resignation of the said trustee, Ira Scott, and of his successor in trust, Francis B. Peabody and of the reversal of said decree appointing the said Charles H. Mulliken as successor in trust it appears that there is no person who now acts or can act as trustee of the estate ot your orators in said land; and, whereas, your orators are advised that it is necessary for their interests, that there should be such a trustee to conserve the estate of your orators in the premises, and to carry out the provisions of said trust in their behalf made and provided.

To the end, therefore, that your orators may have that relief which they can only obtain in a court of equity, and that the defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orators, and that John Q. Wells, of Chicago, of said county, who is a proper person to act as trustee under said deed of trust, and who has consented so to act, if appointed (or some other proper person, may be appointed as trustee under said deed of trust in place of the said Scott, Peabody and Mulliken, to take the title to said land in said deed of trust described, (excepting, however, the said lot three, (3) so as aforesaid sold and conveyed to Julia S. Taylor), upon the trusts in and by said deed created and declared for the benefit of your orators, with the same power and authority by said trust deed given to the said Ira Scott as trustee, and that the said Scott, Peabody and Mulliken be commanded to make, execute and deliver to said new trustee, so to be appointed, all needful and proper conveyances to vest in him said title, and that thereupon said Scott, Peabody and Mulliken be discharged from any further duties as such trustees and for such other and further relief as the equities of this case require, and as to your Honors shall seem meet.

May it please your Honors to grant unto your orators the peoples' writ of subpœna to be directed to the said Ira Scott, Francis B. Pea-

body, Charles H. Mulliken, The Franklin Savings Bank, Maria L. Taylor, Sr., and Frank C. Taylor, Sr., thereby commanding them, and each of them at a certain time, and under a certain penalty therein to be limited, personally to appear before your Honors in this Honorable court, and then and there full, true, direct and perfect answer make, to all and singular the premises, and further, to stand, to perform and abide such further order, direction and decree therein to your Honors shall seem meet.

And your orators will ever pray, etc

FRANK C. TAYLOR, JR.,
MARIA LOUISE TAYLOR, JR.,
JOSEPHINE S. TAYLOR,
ALEXANDER TAYLOR,
KATHERINE TAYLOR,
ROBERT C. TAYLOR.

By JNO. Q. WELLS,
*Their next friend.*

ROBT. B. KENDALL,
*Solicitor and of Counsel.*

No. 54 Portland Block.

By Mr. SWIFT: I also offer in evidence as defendant's "Exhibit 50", the answer of the Franklin Savings Bank to the last mentioned bill.

Also as defendant's "Exhibit 51," the order dismissing said bill for want of prosecution, October 31, 1885.

By Mr. KENDALL: Both the last mentioned exhibits objected to as incompetent, immaterial and irrelevent.

Admitted subject to objection.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

CIRCUIT COURT OF THE UNITED STATES IN AND FOR SAID DISTRICT.

Frank C. Taylor, Jr., *et al.*,
*vs.*
Ira Scott, The Franklin Savings Bank, *et al.* } *In Chancery.*

*The separate answer of the Franklin Savings Bank, of Pawtucket, R. I., one of the defendants to the bill of complaint, of said complainants.*

This defendant saving to itself all advantage of exception to the many errors in said bill contained, for answer unto so much thereof as this defendant is advised it is material for it to make answer unto, answering, saith: That it admits that on or about the 13th of June, 1871, Maria Louise Taylor, the mother of said complainants, was seized in fee simple of the premises described in said bill of complaint, and that on or about said the 13th day of June, the said Maria Louise Taylor, together with her husband, Frank C Taylor, Sr., the father of said complainants, executed a certain deed of conveyance under their hands and seals, whereby they purported to convey said premises to said Scott upon certain specific trusts which this defendant believes are substantially set forth in said bill of complaint; but whether said deed was ever delivered to said Scott, as is in said bill of complaint alleged, this defendant is ignorant and leaves the complainants to make such proof in that behalf, as they are advised is material.

And this defendant, further answering, says that it believes it to be true that said deed was acknowledged by the said Maria Louise Taylor and Frank C. Taylor, and recorded, as is in said bill of complaint alleged, and that the record of said deed was destroyed by fire on or about October 9, 1871, as is in said bill alleged, and that on or about January 30, 1873, the said Frank C. Taylor, Sr., and Maria Louise Taylor his wife, filed a bill in the Superior court of Cook county for the purpose of restoring the terms of said deed in trust, alleging that said deed and the record thereof has been destroyed, and setting up a supposed copy (in substance) thereof, substantially as is in said bill of complaint alleged, and that such proceedings were had in said cause in said Superior court; that on or about March 29, 1873, a decree was entered therein, establishing the terms of said deed in trust as prayed, substantially as is in said bill of complaint alleged.

And this defendant further answering, admits that on or about June 13, 1873, said Frank C. Taylor, Sr., and Maria Louise Taylor and Ira Scott, made a subdivision into five (5) lots of the premises described in said bill of complaint, and that said subdivision was platted and recorded substantially as is in said bill of complaint alleged; and further admits that afterwards, and on or about July 23, 1873, said Frank C. Taylor and Maria Louise Taylor filed a petition in said Superior court, on the chancery side thereof, praying, amongst other things, for the appointment of a new trustee in place of said Scott, and filed in said proceeding, the resignation of said Scott as trustee under said trust deed, and the resignation of Francis B. Peabody, who, by the terms of said trust deed, had been appointed successor in trust; and further admits that such proceedings were had in said last mentioned cause; that on or about August 19, 1873, a decree was entered in said cause, by which, amongst other things, one Charles H. Mulliken was appointed trustee in place of said Scott and Peabody, substantially as is in said bill of complaint alleged.

And this defendant, further answering, admits that the said Ira Scott and Francis B. Peabody did execute, acknowledge and deliver to the said Mulliken a certain deed, conveying to said Mulliken as trustee, all the right, title, interest, claim and demand which they, the said Scott and Peabody, had acquired under the said trust deed made to them as aforesaid, which deed was dated on or about September 10, 1873, and was duly acknowledged and delivered by the said Scott and Peabody, and recorded in the recorder's office in and for Cook county, Illinois, on or about September 13, 1873, in book 228, p. 626. And this defendant avers that said deed did convey to, and vest in said Mulliken, all the right, title and interest which the said Scott and Peabody had acquired in said premises by said trust deed to them, and upon the same trusts upon which said Scott and Peabody held the same, and further avers that said title remained vested in said Mulliken upon said trusts, until the same was acquired by, and vested in this defendant by the proceedings and conveyances hereinafter mentioned.

And this defendant, further answering, admits that the said Charles H. Mulliken as trustee as aforesaid, did convey lot 3 in the subdivision of said lot 4, in block 16 of Bushnell's addition to Chicago, to one Julia S. Taylor by deed dated November 10, 1873, in which deed the said Frank C. Taylor Sen., and Maria Louise Taylor his wife, joined for the purpose of signifying their request for the making of such deed, as is in said bill of complaint alleged, the said lot 4 being the premises described in said bill of complaint, and the subdivision thereof being the subdivision made by said Frank C. Taylor and Maria Louise Taylor and Ira Scott, as aforesaid.

And this defendant, further answering, admits that on or about the 4th day of March, 1879, the decree rendered in said Superior court in the first mentioned cause therein, which cause was No. 42,146 in said court, was, upon said bill of review filed therein, reviewed, and the original bill therein (filed January 30, 1873,) dismissed; and this defendant saith that said bill of review was fil d by Frank C. Taylor, Jr., Maria Louise Taylor, Jr., and Josephine S. Taylor, three of the complainants in this bill of complaint, and the complainants Alexander Taylor and Robert C. Taylor were made parties defendant to said bill or review, and the complainant Katherine Taylor, had not at the time of the filing of the said bill of review, or the rendering of the decree thereon, been born; and this defendant avers that said decree of March 4, 1879, dismissing said original bill provided that nothing therein ordered or decreed should deprive this defendant, or Francis S. Howe, as trustee, or Edward W. Russell, as successor in trust, of any interests that they or either of them had in the real estate described in the bill thereby dismissed, being the same real estate described in this bill; said decree further reciting that the claims of said bank and said Howe and Russell had not been in said cause or upon said bill of review, heard or adjudicated.

This defendant, further answering, admits that upon March4, 1879, upon a bill of review filed in the second of said causes in said Superior court, which was No. 44,331 in said court, a decree was rendered dismissing the bill which had been filed therein, upon July 23, 1873; and this defendant saith that said bill of review was filed by Frank C. Taylor, Jr , Maria Louise Taylor, Jr., Josephine S. Taylor and Alexander Taylor, and that the complainant Robert C. Taylor was made a party defendant to said bill of review, and that said bill of review was filed and the decree rendered thereon, prior to the birth of the complainant Katherine Taylor.

And this defendant further saith that the decree entered upon said bill of review, provided that nothing therein ordered or decreed should deprive this defendant or said Francis S. Howe, as trustee, or said Edward W. Russell, as successor in trust, of any interest that either of them might have in the real estate described in the original bill filed therein, being the same real estate described in this bill of complaint, namely, lot 4, in block 16, in Bushnell's addition to Chicago: and said decree further recited that the claims of this defendant

and of said Howe and Russell had not been heard or adjudicated in said cause or upon the hearing of said bill of review.

And this defendant, further answering, admits that after the appointment of said Mulliken as trustee, and prior to the dismissal of said bills, and on or about August 23, 1873, the said Frank C. Taylor, Sen. and Maria Louise Taylor, Sen., and the said Charles H. Mulliken as trustee, made, executed and delivered four (4) trust deeds, in the nature of mortgages, to one Francis S. Howe, since deceased, as trustee, conveying to him said lots 1, 2, 4 and 5, in the subdivision of lot 4, in block 16, in Bushnell's addition to Chicago, one of said lots being conveyed by each of said trust deeds, each of which trust deeds was given to secure the payment of a promissory note for $9,000, made by the said Frank C. Taylor, Maria Louise Taylor and Charles H. Mulliken trustee, to the order of this defendant, payable five years after its date, with interest until the maturity of said notes, which trust deeds were duly acknowledged and delivered and recorded in the recorder's office of Cook county, Illinois, August 25, 1873; in each of which trust deeds said Edward W. Russell was appointed successor in trust

And this defendant, further answering, saith that at the time of the great fire in Chicago, October 8 and 9, 1871, the improvements upon said lot 4, in block 16, in Bushnell's addition to Chicago, were totally destroyed; that said premises had been occupied by the said Frank C. Taylor and Maria Louise Taylor and their family, as a homestead; that after said fire, said premises were improved with a block of five (5) brick, marble front dwelling houses, two stories and a basement and a mansard roof in height, and the $36 000 secured to be paid to this defendant, by the aforesaid trust deeds to said Howe, was money loaned by this defendant for the purpose of making said improvements upon said premises, and the same was actually used for that purpose.

And this defendant, further answering, saith that the said Frank C. Taylor and Maria Louise Taylor, his wife, executed, acknowledged and delivered a fifth trust deed to the said Howe, dated January 1, 1874, given to secure the note of said Frank C. Taylor of the same date, for the sum of $2,875 payable to the order of this defendant, two years after its date, with four interest notes evidencing the interest upon said principal note to the time of its maturity, which last-mentioned trust deed conveyed to said Howe, for the purposes of such security, all of said lots 1, 2, 4 and 5, in said subdivision of lot 4 in block 16, in Bushnell's addition to Chicago, which last mentioned trust deed was also recorded in the recorder's office of said Cook county.

And this defendant, further answering, says that in consequence of default in the payment of the interest upon the notes secured by each and all of said trust deeds, this defendant, being the holder of all of said notes, declared the principal of said notes due, in accordance with the provisions contained in said trust deeds, and on or about June 28, 1876, in this Honorable court filed its bill to foreclose all

e of said trust deeds, making all parties in interest defendants, and amongst others said Frank C. Taylor, Sen , Maria Louise Taylor, Sen., Frank C. Taylor, Jr., Maria Louise Taylor, Jr , Josephine S. Taylor and Alexander Taylor: and after proceedings had in said Superior court upon said bills of review, and after the birth of the complainants in this cause, Katherine Taylor and Robert C. Taylor, this defendant filed its supplemental bill in said proceedings to foreclose said five trust deeds, setting up fully the proceedings had and taken in said Superior court, and making parties defendant to its said proceedings to foreclose, said Katherine Taylor and Robert C. Taylor, and this defendant saith that all of the complainants herein were duly served with process in said proceedings to foreclose, and this Honorable court had jurisdiction of the subject matter of said suit, and acquired jurisdiction of the persons of all the complainants in this cause, as well as of said Frank C. Taylor, Sen and Maria Louise Taylor, Sen.. and all the parties defendant to said proceedings.

And this defendant, further answering, saith that after the filing of said supplemental bill, and after this Honorable court had acquired jurisdiction of all the defendants, as aforesaid, Orville Peckham was appointed guardian *ad litem* for the complainants in this cause, who were infant defendants in said suit to foreclose, and said guardian *ad litem* appeared and filed his answer for said infant defendants, and subsequently, and after said cause had been referred to Henry W. Bishop, Esq., master in chancery of this court, and the report of said master had, after hearing by him been duly filed in said cause, a final decree was entered on or about April 29, 1880, ordering that the premises described in said trust deeds be sold by said master in chancery, unless the amount of the indebtedness secured by said trust deeds and fixed by said decree should be paid within the time in said decree stated.

And this defendant, further answering, saith that said indebtedness was not paid, and that said master in chancery proceeded to sell, and did sell said premises in accordance with the requirements of said decree and the requirements of the laws of the state of Illinois; and on or about June 23, 1880, said master's report of said sale was filed in this court in said cause, and subsequently and upon January 23, 1882, said sale was confirmed by an order duly entered by this Honorable court in said cause; and this defendant saith that all of said proceedings and said decrees still remain in force and effect, none of them having been set aside or reversed and no appeal having been prayed therefrom by any one of the parties to said proceedings; and said decrees and sale are binding and conclusive upon all of the complainants herein.

And this defendant, further answering, saith that at said master's sale, said lots 1, 2, 4 and 5, were struck off and sold to this defendant, and certificates of sale therefor were duly issued by said master in chancery to this defendant; and subsequently, neither of said lots having been redeemed, as provided by law, said master in chancery

made, executed and delivered to this defendant, master's deeds for said lots 1, 4 and 5, which deeds were dated December 27, 1881, and were duly acknowledged and recorded in the recorder's office in and for said Cook county; and this defendant is still the owner of said last described lots.

And this defendant, further answering, saith that said decree under which said lots were sold, provided that in making such sale, said master should offer for sale the right, title and interest of said Frank C. Taylor and Maria Louise Taylor, Sen., and if said interest should not sell for enough to satisfy the amount of the indebtedness secured upon said premises as adjudged and determined by said decree, said master should then and thereupon at once offer for sale, and sell said premises discharged from all claims by, or on behalf of any and all of said defendants to said cause, except the equity of redemption given by the laws of the state of Illinois; and that said premises should be sold, discharged from all trusts existing in favor of either of said defendants; and this defendant saith, that said premises were sold in accordance with the terms of said decree, and were sold, discharged of all trusts in favor of the complainants herein under the trust deed set up in said bill of complaint made by the said Frank C. Taylor and Maria Louise Taylor, to said Ira Scott; and this defendant now holds said lots, 1, 4 and 5, discharged from all trusts, and from all claims upon the part of the complainants herein, and each of them

And this defendant, further answering, saith that it was provided in said trust deed to said Ira Scott, as is set up in said bill of complaint, that during the joint lives of said Frank C. and Maria Louise Taylor, the said Ira Scott, or his successors in trust, should bargain, sell and convey the whole or any portion of the premises thereby conveyed, free and clear from all trusts, upon the joint written request of the said Frank C. and Maria Louise Taylor, to be expressed by their joining with the trustee in the execution of the deed or deeds conveying such premises; and this defendant saith that after the sale of said premises to it by the master in chancery of this court as aforesaid, this defendant bargained with said Frank C. Taylor and Maria Louise Taylor and the said Charles H. Mulliken, as trustee, for the purchase of all the right, title and interest of the complainants herein, in said lots 1, 4 and 5, in said subdivision of said lot 4, and in consideration that said Frank C. Taylor and Maria Louise Taylor and said Mulliken, as trustee, would convey to this defendant or to its use, whatever right, title and interest to the complainants herein might have in said last mentioned lots, this defendant agreed to convey for the use of the complainants herein, all its right, title and interest in lot 2, in said subdivision of said lot 4; and in pursuance of said agreement this defendant assigned to said Peckham, in trust for the complainants herein, a certificate of sale which had been issued to it by said master in chancery upon lot 2, in said subdivision of lot 4, and released said lot 2, from a certain mechanics' lien upon all of said lots and the improvements thereon, which lien was held and owned by this defend-

ant; and the said Mulliken as trustee, and the said Frank C. Taylor and Maria Louise Taylor in pursuance of such bargain and sale, made, executed and delivered a certain quit claim deed dated July 20, 1880, and duly acknowledged and recorded in the recorder's office aforesaid, conveying to Hiram H. Thomas, the president of this defendant, for the use of this defendant, all the right, title and interest of the complainants herein, and of the said Frank C. Taylor and Maria Louise Taylor, Sen., in and to said lots 1, 4 and 5, in the subdivision of said lot 4; and this defendant saith that the said Peckham thus acquired for the use of the complainants herein, free and clear from all encumbrance, one of said houses in said block, with the land upon which the same stood, and the land appurtenant thereto, and the same was at that time of the value of at least $10,000, and at the present time, is of still greater value; and this defendant saith that said sale and conveyance made to the said Thomas, at the request of this defendant and for its use, were made in accordance with the terms of said trust deed to said Scott, and conveyed all the right, title and interest of the complainants herein, in and to said lots 1, 4 and 5.

And this defendant, further answering, saith that on or about September 13, 1873, one Henry Gilsdorff, Frederick Baumann, and Jas. B. Sullivan, commenced proceedings in the Circuit court of Cook county aforesaid, against said Frank C. Taylor, Maria Louise Taylor, Frank C. Taylor, Jr., Maria Louise Taylor, Jr, Josephine S. Taylor and Alexander Taylor, for the purpose of establishing a mechanics' lien upon said lot 4, in block 16, in Bushnell's addition to Chicago, and said Circuit court obtained jurisdiction in said proceedings, all of the defendants therein, and such proceedings were had; that on or about July 20, 1874, a decree was entered by said Circuit court establishing a lien upon said premises, which decree was subsequently affirmed by the Supreme court of the state of Illinois, and the same is still in full force, and binding and conclusive upon all of the complainants herein.

And this defendant, further answering, saith that subsequently and on or about July 15, 1881, said lots 1, 4 and 5, were duly sold by a master in chancery of the Circuit court of said Cook county under and in accordance with the decree of said court and in accordance with the laws of said state of Illinois, and at such sale said Hiram H. Thomas purchased said premises for, and on behalf of this defendant, and certificates of sale were duly issued by said master in chancery upon said premises to said Thomas, that said premises were not redeemed within the time provided by law, and, after the time for such redemption had expired, master's deeds were duly executed, acknowledged and delivered to the said Thomas for said premises; and this defendant submits that said deeds conveyed to the said Thomas all the right, title and interest if any, which the complainants herein then had in said premises.

And this defendant, further answering, saith that ever since the time that it assigned said certificates of sale to said Peckham for the use of the complainants herein, said complainants, with the said

Frank C. Taylor, Sr. and Maria Louise Taylor, Sr. have been, and now are in possession of the premises covered by said certificate so assigned, being said lot 2, of the subdivision of lot 4 aforesaid; and this defendant ever since that time has been in possession, and now is in possession of said lots 1, 4 and 5, in said subdivision, with the improvements thereon.

And this defendant, further answering, saith that said complainants have not, nor has either of them any right, title or interest in said lots 1, 4 and 5, or either of them, but the same are owned by this defendant discharged of all trust; and this defendant further saith, that said trust deed to Ira Scott, did not refer to, or concern any property other than said lots 1, 2, 3, 4 and 5, of said subdivision of said lot 4, and all of said lots have been entirely discharged from said trust, and there is, therefore, no estate for which to appoint a trustee, as prayed in said bill of complaint.

And this defendant, further answering, saith that the decree of this Honorable court rendered in favor of this defendant in the aforesaid foreclosure proceedings remaining in full force and not reversed and appealed from, said complainants do not show any case entitling them to maintain their bill of complaint, and if said complainants were entitled to attack said decree of this Honorable court, the same could not be done by said bill of complaint filed in the State court as was done in this case, and this defendant prays the same benefit of this defence, as if the same were made by demurrer to said bill of complaint.

And this defendant, further answering, saith that all the foregoing matters and things it is ready to maintain and prove as this Honorable court shall direct, and it prays to be hence dismissed with its costs and charges in this behalf sustained.

FRANKLIN SAVINGS BANK,
Of Pawtucket, Rhode Island,

By SWIFT & CAMPBELL,
*Its Solicitors.*

SWIFT & CAMPBELL,
*Solicitors.*

W. H. SWIFT,
*Of Counsel.*

"EXHIBIT 51."

Frank C. Taylor, Jr., Maria Louise Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Katherine Taylor and Robert C Taylor, infants, by their next friend, John Q. Wells.
*vs.*
Ira Scott, *et al.*

This cause being now called under the notice heretofore given, and no objection being made, it is ordered that the same be dismissed for want of prosecution at complainants' costs, and that execution issue therefor.

By Mr. SWIFT: I now offer the following orders, entered in the foreclosure suit of the *Franklin Savings Bank* v. *Taylor, et al.*, in the Federal court of this Circuit, No. 13,751, namely:

Order of default as to several defendants, and appointing William H. Bradley guardian *ad litem*, entered March 26, 1877.

Order of reference to Henry W. Bishop, master, entered May 31, 1877.

The resignation of William H. Bradley as guardian *ad litem*, and the appointment of Mr. Peckham as guardian *ad litem* in his stead, entered July 7, 1877.

Order allowing the new guardian *ad litem* to file an amended answer, entered July 23, 1877.

An order appointing said Peckham guardian *ad litem* of certain other infant defendants, entered May 7, 1879.

Order allowing certain parties defendant to file supplemental answers entered June 2, 1879.

An order dismissing the bill as to certain defendants, and permitting said Peckham as guardian *ad litem* to withdraw his answers, and substituting E. O. Brown, as solicitor for Maria Louise Taylor and Charles H. Mulliken, entered April 10, 1880, as Exhibits 52, 53, 54, 55, 56, 57, and 58, which are as follows:

Franklin Savings Bank, of Pawtucket,
*vs.* *In Chancery.*
Frank C. Taylor, *et al.*

Now comes the complainant by Grant & Swift, its solicitor, and it appearing to the court that the defendants, Frank C. Taylor, Francis

S. Howe, trustee, etc., Edward W. Russell, trustee, etc., George S. Carmichael, Harriet K. Carmichael, Michael Byrne, Thomas O'Brien, Robert H. Foss, John W. Doane, John Wright, Patrick J. Towle, John Lill and Adam J. Weckler, executors, etc., R. Biddle Robetrs and Emil B. Weishaar, administrators, etc., Edward Foster, Ellis S. Chesbrough, Jr., assignee, etc., and the State Bank of Nebraska, had each been duly served with process, or had appeared herein and had failed to answer the complainant's bill of complaint herein in conformity with the rules and practice of this court, and they being now each three times solemnly called come not, but make default. It is thereupon considered by the court that their default be entered and that the complainant's bill of complaint and the matters and things therein contained be taken as confessed and true as against them.

And on motion of said complainant's solicitor it is ordered by the court that the bill herein be dismissed as to the defendants John L. Beveridge, Charles Hoffman and Gustav Fischer; and on further motion it is ordered by the court that William H. Bradley be and he is hereby appointed guardian *ad litem* for the infant defendants Frank C. Taylor, Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor herein.

Franklin Savings Bank, of Pawtucket, *vs.* Frank C. Taylor, *et al.* } *In Chancery.*

On motion of complainant's solicitor it is hereby ordered by the court that this cause be referred to Henry W. Bishop, Esq., the master in chancery of this court to take proofs herein and report the same to the court.

Franklin Savings Bank, of Pawtucket, *vs.* Frank C. Taylor, *et al.* } *In Chancery.*

The resignation of William H. Bradley, Esq., as guardian *ad litem* of the infant defendants in said cause, Frank C. Taylor, Jr., Maria L. Taylor, Josephine S. Taylor and Alexander Taylor being this day received, it is ordered by the court that said resignation be accepted, and that Orville Peckham be and he is hereby appointed guardian *ad litem* of the said infant defendants, Frank C. Taylor, Jr., Maria L. Taylor, Josephine S. Taylor and Alexander Taylor.

Franklin Savings Bank, of Pawtucket,
*vs.*
Frank C. Taylor, *et al.* } *In Chancery.*

On motion of Mr. Brown, solicitor, leave is given the guardian *ad litem* to file an amended answer herein, and twenty days time for so doing is given him herein.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs.*
Frank C. Taylor, *et al.* } *In Chancery.*

On motion, it is ordered by the court that Orville Peckham, Esq., be and he is hereby appointed guardian *ad litem* for the infant defendants, Robert C. Taylor and Katherine C. Taylor herein, and thereupon time for said guardian *ad litem* of said last named defendants to answer herein is extended twenty days.

Franklin Savings Bank, of Pawtucket, Rhode Island,
*vs*
Frank C. Taylor, *et al.* } *In Chancery.*

On motion, leave is given the infant defendants Frank C. Taylor, Jr., Josephine S. Taylor, Maria Louise Taylor and Alexander Taylor, to file a supplemental answer herein as per stipulation filed.

Franklin Savings Bank,
*vs.*
Frank C. Taylor, *et al.* } *In Chancery.*

On motion of complainant's solicitor it is ordered by the court that the bill herein be dismissed as to the defendants the Gowan Marble Company and as to the defendants James C. Grant and Mary J. Price, administratix of the estate of John Price, and leave is given Orville Peckham, guardian *ad litem*, to withdraw all answers filed by him herein and to file new answers instanter. And thereupon time for parties to take testimony herein is extended to April 12, A. D. 1880. And thereupon Edward O. Brown, Esq., is substituted as solicitor for defendants, Maria L. Taylor and Charles H. Mulliken trustee, etc., herein

By Mr. SWIFT: I now offer in evidence as "Exhibit 59," the application to the Franklin Savings Bank for a loan of $36,000.

By Mr. KENDALL: I object to the introduction of the application, as immaterial, irrelevant and incompetent testimony.

Objection overruled.

A B 7

No. . . . . CHICAGO, June 13, 1873.

MR. GEO. W. NEWELL, TREASR.

*Dear Sir:* I hereby make application for a loan of $36,000 for 5 years, with interest at the rate of 9 per cent. per annum, payable semi-annually, at such time and place as lender may indicate.

The security for such loan (to be free from all other incumbrances), will comprise land and improvements as follows, to-wit: 84 feet fronting west on North Dearborn street, with a depth of 150 feet to a 16 foot alley; the said land being described as follows: the S. E. corner of North Dearborn and Maple streets, being a portion of a subdivision of lot 4, block 16, Bushnell's addition, and having a market value in cash of not less than $25,200.

The improvements thereon are 4 stone and brick residences, each 3 stories and basement known as No. ..... and were constructed in 1872 and 1873 at a cost of not less than $42,000 and their present market value in cash is not less than $43,000 making the total market value in cash of said land and improvements not less than $68,000.

The insurance on said improvements, as collateral security, will be at your dictation for term of loan for not less than $30,000.

Said premises are occupied as residences at a rental of $6,500 per annum.

F. C. TAYLOR,
*Applicant.*

*To Geo. W. Newell, Treasr.*

I would like to have the above in four (4) mortgages, $9,000 on each house, to take the place of the loan and interest due the 27th inst.

The balance due me can be remitted at your convenience.

By Mr. SWIFT: I also offer in evidence as "Exhibit 60," a certain letter from Frank C. Taylor, addressed to the treasurer of the Franklin Savings Bank, which is as follows:

By Mr. KENDALL: I object to the introduction of the letter as immaterial, incompetent and irrelevent.

Objection overruled.

A B 3

FOURTH NATIONAL BANK.

CHICAGO, June 27, 1872.

Henry R. Payson, President.
F. C. Taylor, Vice President.
George Taylor, Cashier.
C. D. Sherman, Ass't Cashier.

GEORGE W. NEWELL, ESQ. TREASURER.

*Dear Sir:* I enclose herewith my note for $30,000, dated June 26, '72, due on or before June 26, '73.

It is understood that although the note bears interest from its date, I am to pay you interest only for the time I have the use of the money, and I am to draw on you for money as I need it.

Please advise me if the above is correct.

I shall probably draw for $10,000 this week or early next week. The trust deed mentioned in the note will be filed for record as soon as I can have it executed

Yours very truly,

Ans. 4 July F. C. TAYLOR.

It is stipulated and agreed between counsel, that the exhibit referred to in the petition of Gilsdorff in the case of *Gilsdorff, et al.*, vs. *Taylor, et al.*, was a copy of the trust deed of Frank C. Taylor to Ira Scott as restored by a decree of the Superior court, in the case of *Taylor* vs. *Taylor*, number 42,146, and that said exhibit was filed in connection with and as a part of said petition.

Adjourned to Tuesday, January 23, 1890, at 10 o'clock A. M.

Examination resumed pursuant to agreement.

Counsel present as before.

E. O. BROWN, recalled for cross examination by Mr. Kendall.

Q. Were you present in court when the decree of foreclosure in the case of the *Franklin Savings Bank* vs. *Taylor and others*, was entered, was submitted to the court?

A. I do not remember that I was, but I do not remember that I was not.

Q. Do you remember whether that decree was submitted to you for your approval before it was entered?

A. I should say it was not; I do not know any reason why it should be, and I don't remember that it was.

Q. In the letter which you wrote to Frank C. Taylor, dated the 29th of July, 1879, you state in effect, that you and Mr. Peckham, as guardian *ad litem* of the infant defendants, believed that the settlement which had been proposed by the savings bank was for the best interests of the infant defendants; had you and Mr. Peckham at that time, determined upon the basis proposed by the bank, that is, upon the terms that were afterwards reduced to writing and embodied in the agreement which has been put in evidence here?

A. Upon substantially those terms, if we could get them. Whether that settlement could have been carried out, or was made conditional so far as the other side of it was concerned, upon our showing them that Frank Taylor professed to be satisfied with it, I don't remember. I know there was some talk about that feature of it. Mr. Peckham had determined to carry out that settlement if he could make it, substantially as it was carried out.

Q. Whether he had the consent of the father, Frank C. Taylor, or not?

A. Yes.

Q. Then the long letter of the 29th of July, which you wrote to Mr. Taylor, was rather in the nature of an agreement in favor of making that settlement and procuring his consent to it?

Objected to; the letter speaks for itself on that point.

A. That letter was written with a very strong hope that the matter therein contained would make Frank C. Taylor see what I thought he was disinclined to see, that it was for the interest of the children to make that settlement, and make him consent. I should have very

much regretted any necessity for Mr. Peckham to have made, and myself to have carried out a settlement contrary to his wishes, and we were extremely anxious that he should consent to the settlement which we had determined was for the best interest of the children to be made. I think the letter says something of that sort, doesn't it?

Q. You stated in your examination that Mr. Peckham was appointed guardian *ad litem* on the 7th day of July, 1877, and from that time on, to the end of the litigation, you represented the children, under his direction and instructions and employment and nobody else. Whom had you represented previous to that time?

A. I can't remember, but my impression was, I represented Charles H. Mulliken, the trustee, and Maria Louise Taylor.

Q. The wife of Frank C. Taylor?

A. Yes. And I want to say further about that, that I think after Mr. Peckham was appointed, I did represent Maria Louise Taylor in an intervening petition brought to the court to get some furnaces, or something, out of the house.

Q. In regard to the fixtures in the house?

A. In regard to some fixtures in the house; but that was merely incidental, not in the main case.

Q. Then at the time the final decree was entered in that case, you were not of counsel for Maria Louise Taylor and Charles H. Mulliken, trustee, were you?

A. No, sir; I think not.

Q. How were the objections of the infant defendants to the foreclosure of the property withdrawn?

A. There was some permission granted to withdraw the answer of the guardian *ad litem*, and they were withdrawn from the files. Permission from the court, in some form, to withdraw the answers of the guardian *ad litem*, and as a matter of fact, I know that in some conversations between me and Mr. Swift, it was suggested by him that it was best that the answers be withdrawn from the files altogether, that the abstracts of title should not be cumbered with the statement in the answers, and then the further statement of the order allowing their withdrawal; and what was done exactly about withdrawing them from the files, I wouldn't be sure.

Q. Were there any answers on behalf of these infant defendants, other than the usual short form of answer?

A. Yes, sir; when Mr Bradley withdrew from the position of guardian *ad litem* and Mr Peckham was appointed, we got permission to answer for the infant defendants more fully, or to withdraw the answers already filed, which were in the usual form of submitting their rights to the court, and very full answers, setting up the loss of the old trust deed as alleged, and its restoration by the courts, its being found, and the review proceedings in the Superior court was set up in these answers. The answers were not filed until after the Superior court of Cook county had reviewed the decrees restoring the trust deed and appointing Charles H. Mulliken; after that was done, the answers, as I say, filed by the guardian *ad litem* in the

United States Circuit court, show all that proceeding down to and including the review of the decrees by the Superior court. I don't know that it happened more than once, but I should say it did; there were other children born to them, and as the rights of each one accrued by coming into existence, there were further answers, supplemental answers, or answers in his behalf, so that, as a matter of fact, there were several answers on file.

Q. The full and complete answer to which you refer, setting up all these proceedings, were the answers made to the supplemental bill of the savings bank in which it set up the facts of the loss and recovery of the trust deed?

A. I can't say about that. I should think that there were some, and I can't say either whether there were not quite full answers filed before the decrees in the Superior court of Cook county were reviewed, which were afterwards supplemented by other answers. My impression is that they were long, full answers of the infant defendants filed before the bank filed its supplemental bill.

Q. Do you know where those answers are?

A. No, I don't. I was going to say I thought I knew where some of the exhibits attached to them were used. I don't know where the answers are.

Q. Do you recollect whether they were actually withdrawn from the files by you?

A. That is my strong impression, that there was some permission and agreement, that they were taken off the files altogether.

Q. What was done with them?

A. I can't remember. I have looked, myself, for them, and I can't find them in any papers which I had, but, I have an impression that they were largely made up of very long exhibits, of course, because there was so much documentary matter in the case, and some of those exhibits, I think, were attached, to save further expense to that bill which Orville Peckham filed in the circuit court of Cook county for directions as to what to do with the house which was deeded to him, or which he got a certificate of sale for, and that is all I can remember about what became of them.

Q. The arrangement, then, between you as counsel for Mr. Peckham, guardian *ad litem*, and Mr. Swift, counsel for the bank, was substantially to the effect that all answers should be withdrawn and decree entered as in case of default?

A. I left that part of it to Mr. Swift; I agreed to withdraw all opposition for the infant defendants, in the proceedings, and I should suppose that that would leave, as a natural result, the securing of a decree by default. But you will understand, that whatever I did of that sort, I did because of an agreement with Mr. Swift; I did it as he preferred to have it done, not that I was willing to take the responsibility of getting that decree.

Q. The carrying out of the matter you left, practically, in Mr. Swift's hands?

A. He told me what he was going to do, the requirement of me, to withdraw the answers and appearance of the infant defendants, and he would go on and fix it. I relied, of course upon his clients turning over the certificate of sale after he got it, of one of the houses, which he did.

*Re-direct Examination by Mr. Swift.*

Q. When the full answers which you filed for Mr. Peckam, as guardian *ad litem*, were withdrawn they were withdrawn by permission of the court, were they not?

A. Yes; I know they were.

Q. And in obtaining the permission of the court to withdraw the full answer, you made known to the court what the object was in withdrawing it?

A. Yes; I am very sure I did.

Q. And wasn't it a part of the arrangement, that in place of the full answer which was to be wtthdrawn, you should file the ordinary answer of guardian *ad litem*?

A. Well, that I don't remember. Very likely, but I don't remember that fact at all. If there are any such answers on file of that date, filed at that time, I should not have any hesitation whatever in saying it was a part of the arrangement, but I don't remember it.

Q. If the files in the case show that you did file for Mr. Peckham the ordinary brief answer for guardian *ad litem*, then that answer was filed at the time of, or after the full answer was withdrawn, was it not?

A. Yes, undoubtedly.

Q. When you first answered for Mr. Peckham, as guardian *ad litem*, you filed a full answer, setting up the original trust deed and the rights of the minors?

A. That is my recollection.

Q. So that if the files now show a mere formal answer to have been filed by you, then such answer was filed after the full answer had been withdrawn?

A. Yes. If there are answers of that sort on file, the general, usual answers of guardian *ad litem* for those infant defendants, upon file, they were put on after the other answers were withdrawn, and on account of our arrangement and agreement with Mr. Swift.

Q. That is, you did not undertake to enter into any arrangement to suffer infant defendants to be defaulted, did you?

A. No.

By the WITNESS: I desire to make this correction in my testimony. I have stated that at the time the foreclosure decree was entered, I

did not represent Charles H. Mulliken nor Maria Louise Taylor; having seen what purports to be notes of various orders entered in the record in that case, my memory is aided, and my present recollection is that it was agreed that to carry out that settlement, I should appear as solicitor for Maria Louise Taylor and for Charles H. Mulliken, in case of whatever solicitor appeared to be of record at the time, and that I secured some withdrawal of Mr. Asay, and entered my appearance and was substituted as such solicitor.

*Re-cross Examination by Mr. Kendall.*

Q. You stated that when this order of court was made, authorizing this withdrawal of these answers, that the reason for so doing was explained to the court. Do you recollect anything more definite about it than that, whether it was in open court?

A. My recollection is very vague about the details of the settlement after it was agreed upon, because I knew I left it to Mr. Swift to manage. However, meaning, wishing and desiring to do everything which he wanted done to carry out and perfect, as I understood it, the settlement which was agreed upon. I feel sure that I knew in some way, it was brought to the attention of the court, but just how, whether directly, so far as I was concerned, or through Mr. Bishop, I don't remember.

Q. In connection with the withdrawal of these answers, you don't recollect any more explanation was given in the matter, to the court, then a mere statement that it was in pursuance of an agreement of the parties?

A. The best of my recollection is, that I explained the whole matter to Mr. Bishop, who was sort of vice-chancellor, and that whatever he may have said or what he did say to the court, I don't know. I feel sure that I had frequently talked the matter over with Mr. Bishop in one form or another.

By Mr. SWIFT: Isn't it a fact, Mr. Brown, that when you procured the resignation of Mr. Bradley, that you explained to the court why you wished Mr. Bradley to resign?

A. Oh, yes.

Q. And why you wished Mr. Peckham to come in?

Q. At that time, I remember it.

Q. And you explained to the court at that time, did you not, fully, the rights of these minors, as you looked at them, under the provisions of the trust deed which had been found?

A. Yes

Q. And you explained to the court that you desired Mr. Peckham should answer fully, setting up those rights.

A. I did, and I also, if I am not very much mistaken, told the court that I thought the guardian *ad litem* should move in the Superior court of Cook county before he was called upon to do much in the Circuit court. I rather gave the court, so far as I thought I could properly, to understand that it ought not to hurry us in that tribunal, until we had an opportunity to review the decrees in the State court.

Q. So you put the rights of the minors fully, explicitly, understandingly under the direction of the court?

A. I so understand it.

Q. And when you applied for leave to withdraw these answers which you thus filed with the knowledge of the court, you communicated to the court in some way, the information that these full answers were withdrawn in consequence of a settlement?

A. That is my recollection.

Signature of witness waived.

By Mr. SWIFT: I now offer in evidence as defendant's "Exhibit 61," the answer of the guardian *ad litem* to the original bill, in *Taylor* vs. *Taylor*, No. 44,331, in the Superior court, which is as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE SUPERIOR COURT OF COOK COUNTY.

To the August Term, A. D. 1873.

Frank C. Taylor and Maria L. Taylor,
*vs.*
Ira Scott, Francis B. Peabody, Frank C. Taylor, Jr., Maria Louise Taylor, Jr., Josephine S. Taylor and Alexander Taylor. } *In Chancery.*

*The joint and several answers of Frank C. Taylor, Jr., Maria Louise Taylor, Josephine S. Taylor and Alexander Taylor, infants under the age of eighteen years, by Nicholas A. Lauer, their guardian ad litem four of the defendants, to the bill of complaint of Frank C. Taylor and Maria L. Taylor, complainants.*

These defendants, answering by their said guardian *ad litem*, say that they are infants under the age of eighteen years, and that they therefore submit their rights and interests in the matter in question in this cause to the protection of the Honorable court, without this, that any other matter or thing material or necessary for these defendants, to make answer unto and not herein, as hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain and prove as this Honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

NICHOLAS A. LAUER,
*Guardian ad litem for said minor defendants.*

Complainant's Exhibit C.

By Mr. KIMBALL: I will offer in evidence, as complainant's "Exhibit 9," the promissory note of Frank C. Taylor for $30,000, dated June 26, 1872, payable to the order of George W. Newell, treasurer, with the endorsements thereon, which is as follows:

$30,000. CHICAGO, June 26, 1872.

On or before the twenty-sixth (26) day of June, eighteen hundred and seventy three (1873), I promise to pay to the order of George W. Newell, treasurer, the sum of thirty thousand dollars, ($30,000), with interest at the rate of ten (10) per cent. per annum, both principal and interest payable at the Franklin Savings Bank, of Pawtucket, Rhode Island.

This note bears interest after maturity at the rate of ten per cent. per annum, and is secured to be paid by trust deed bearing even date herewith executed by Frank C. Taylor, and Maria Louise Taylor, his wife, to Edward Brown, which is duly stamped in the sum of thirty-dollars ($30), and is given for an actual loan of money, made on the day of the date hereof.

FRANK C. TAYLOR.

(Franklin Savings Bank, Pawtucket, R. I. Paid August 30, 1873.)

Endorsed on the back: "F. C. Taylor's note, No. 696, paid August 0, '73."

By Mr. KENDALL: I also offer in evidence, as complainant's "Exhibit 10," the trust deed given by Frank C. Taylor and Maria Louise Taylor, his wife, to Edward Brown, dated the 26th day of June, 1872, securing the promissory note for $30,000, just offered, with the endorsements thereon, which is as follows:

This indenture, made this 26th day of June, in the year of our Lord, one thousand eight hundred and seventy-two (A. D. 1872), between Frank C. Taylor, of the city of Chicago, in the county of Cook and state of Illinois, and Maria Louise, his wife, party of the first part, and Edward Brown, of the city, county and state aforesaid.

Witnesseth, that whereas the said Frank C. Taylor has this day executed his certain promissory note bearing even date herewith, for the sum of thirty thousand dollars ($30,000), payable to the order of George W. Newell, treasurer, at the Franklin Savings Bank, of Pawtucket, Rhode Island.

And whereas, the said party of the first part are desirous of securing, not only the prompt payment of said promissory note above mentioned, and interest thereon, but also of effectually securing and indemnifying the said George W. Newell, treasurer, or his legal representative, for or on account of any assignment, endorsement, guarantee or transfer of said promissory note.

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of the sum of one dollar, to them in hand paid by said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath, and do hereby grant, bargain, sell and convey nnto the said party of the second part, his heirs, assigns or successors in trust, forever, all the premises situate in the city of Chicago, county of Cook and state of Illinois, known and described as follows, viz: That part of block sixteen (16), in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the east line of Dearborn street three hundred (300) feet north of the southwest corner of said block; thence running north on the east line of Dearborn street one hundred and three (103) feet, more or less; to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Deaborn street one hundred and three (103) feet, more or less; thence west parallel with Maple street one hundred and fifty (150) feet to place of beginning. The same being lot four (4), block sixteen (16), Bushnell's addition to Chicago.

To have and to hold the same, together with all and singular, the privileges and appurtenances thereunto belonging, in trust, nevertheless, that in case of default in the payment of the said promissory note or the interest thereon, or any part thereof, according to the true meaning, tenor and effect of the said promissory note, then, on the application of the legal holder of the said promissory note it shall and

may be lawful for the said party of the second part, his heirs, assigns or successor in trust, either in person or by atttorney, to sell and dispose of the said property or premises hereinbefore described, and all the right, title, benefit and equity of redemption of the said party of the first part, their heirs or assigns, therein, at public auction, at one of the doors of the court house, in the city of Chicago, in the county of Cook, and state of Illinois, to the highest bidder or bidders, for cash, first giving notice of the time and place of such sale, by publishing such notice in one of the newspapers at that time published in the said city of Chicago, by ten daily publications in such paper, the last of which shall be at least thirty days before such sale, which sale may be adjourned from time to time, as may, by said party of the second part, his heirs, assigns or successors in trust, be thought expedient, by public proclamation or otherwise (personal notice to said party of the first part of such sale, or adjournment of sale, being hereby expressly waived); and said party of the second part is hereby fully authorized to make, execute and deliver to the purchaser or purchasers at such sale, or adjourned sale, good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions, and other expenses of this trust, including all money advanced for insurance, taxes, assessments or liens of any kind on said premises, with interest thereon at ten per cent. per annum, to pay the amount, which shall, by said promissory note, appear to remain unpaid at the time of such sale, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers, at any such sale, to see to the application of the purchase money, which sale or sales so made, shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And the said party of the first part, for themselves, their heirs, executers, administrators and assigns, do further covenant and agree that they will pay, or cause to be paid, all taxes and assessments, which may be levied or assessed on said premises, or any part thereof, while said promissory note remains unpaid, and, if in consequence of their neglect to pay said taxes or assessments, the said premises or any part thereof, shall be advertised for sale for the tax or assessment due thereon; it shall, and may be lawful for the said party of the second part, or his attorney or the legal owner or holder of said promissory note, at his option, at any time, to pay and discharge said tax or assessment, or to redeem the said premises or any part thereof, which have or may be sold at any tax sale for taxes or assessments due or to become due thereon, or to purchase any outstanding title acquired by any deed or tax certificate arising from any past or future tax sale of said premises, or any part thereof, on such terms as they may deem advisable, without notice to the said party of the first

part and the amount of money so paid shall, with interest at the rate of ten per cent per annum in addition thereto, be added to the payment which shall next thereafter become due on said promissory note, and shall also constitute an additional indebtedness from the said party of the first part, which this deed is given to secure

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, or of a breach in any of the covenants or agreements herein contained, then, and in that case, the whole principal sum hereby secured, and the interest thereon, according to the tenor and effect of said promissory note to the time of such sale, shall, at the option (without notice thereof to said party of the first part, their heirs, assigns or legal representatives) of the legal holder or holders of said promissory note become at once due and payable, and the premises hereby conveyed may be sold in like manner and with the same effect as if the said indebtedness had fully matured.

And it is further agreed by the parties hereto, that on making sale as above provided for, said party of the second part may sell the premises, either in parcels or altogether, as he may see fit; that all the acts and trusts, which he is by these presents empowered to perform and execute, he may perform and execute, as well by attorney as in person, and that in case said party of the second part, either in person or by his attorney, shall hereafter execute any deed, conveyance or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be *prima facie* evidence that the same was properly and lawfully made by said party of the second part, in pursuance of the powers hereby granted.

And the said Frank C. Taylor and Maria Louise Taylor, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the state of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled, "An act to exempt homesteads from sale on execution," passed by the general assembly of the state of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled, "An act to amend 'an act to exempt homesteads from sale on execution,'" passed by said assembly, A. D. 1857, and approved February 17, 1857.

And the said Frank C. Taylor and Maria Louise Taylor, for themselves, their heirs, executors and administrators, covenants and agrees to and with the said party of the second part, his legal representatives or successor in trust, that at the time of the ensealing and delivery of these presents, they are well seized of said premises in fee-simple, and have good right, full power and lawful authority to grant, bargain and sell the same in manner and

form aforesaid, and that the same are free and clear from all liens and incumbrances whatever (except as herein specified.)

And it is further agreed, and especially understood, that in case of the death, resignation, removal from the city of Chicago, or inability to act, of said party of the second part, then George Taylor of the said city of Chicago, shall be and hereby is appointed and made the successor in trust, herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In witness whereof the said party of the first part have hereunto set their hands and seals and affixed the required stamp the day and year first above written.

FRANK C. TAYLOR. [L. S.]
MARIA LOUISE TAYLOR. [L. S.]

[Revenue stamp $20.]
[Revenue stamp $10.]

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

I, Lucius Hoyt, a notary public, in and for and residing in said city of Chicago, in said county, in the state aforesaid, do hereby certify that Frank C. Taylor and Maria Louise, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed, as having executed the same, appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the same instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called of the state of Illinois.

And the said Maria Louise, wife of the said Frank C. Taylor, being of the full age of eighteen years, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed, and also all her rights and benefits under the "Homestead Exemption Laws," so called, of the state of Illinois, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished all her dower, and all right, title and interest in and to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage and exemption under any and all "Homestead Exemption Laws," so called, of the state of Illinois, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal, this 26th day of June in the year of our Lord, one thousand eight hundred and seventy-two.

[NOTARIAL SEAL.] LUCIUS HOYT,
*Notary Public.*

PAWTUCKET, R. I. Oct. 27, 1873.

The note for which this trust deed was given to secure having been paid in full, the Franklin Savings Bank does hereby cancel and discharge this deed.

FRANKLIN SAVINGS BANK,
[SEAL.] GEO. W. NEWELL,
*Treasurer.*

Signed and sealed in presence of L. P Clarke.

[Endorsed]: No. 42,002. Filed for record in the recorder's office of Cook county, Illinois, this 9th day of July, A. D., 1872, and recorded in book 111 of records, page 272.

NORMAN GASSETT,
*Recorder.*

By Mr. KENDALL: I also offer in evidence as complainant's "Exhibit 11," a partial release from Edward Brown, trustee, and the Franklin Savings Bank, to Frank C. Taylor, dated the 15th day of April, 1873, with the certificate of acknowledgement attached thereto, and the endorsements thereon, which is as follows:

Know all men by these presents, that we, Edward Brown, of the city of Chicago, in the county of Cook, in the state of Illinois, trustee, and the Franklin Savings Bank, of Pawtucket, in the state of Rhode Island, by George W. Newell, its treasurer, duly authorized to execute these presents in the name of said, The Franklin Savings Bank, by its board of directors, for, and in consideration of one dollar, to them in hand paid, and for other good and valuable consideration, the receipt whereof, is hereby confessed, do hereby grant, bargain, remise, convey, release and quit-claim, unto Frank C. Taylor and Maria L. Taylor, of said city of Chicago, all the right, title, interest, claim or demand, whatsoever, the said Edward Brown and the Franklin Savings Bank, or either of them, may have acquired in, through or by a certain indenture or trust deed, bearing date the 26th day of June, A. D. 1872, and recorded in the recorder's office of said Cook county, in the state of Illinois, in book 111, page 272, to the following portion of the premises therein described, to-wit: The north twenty (20) feet of the south sixty (60) feet of lot four (4) in block sixteen (16), in Bushnell's addition to Chicago, recorded in the office of the recorder of deeds of said Cook county, in book 165 of maps, on page 51, in the city of Chicago, in the county of Cook, in the state of Illinois.

In testimony whereof the said Edward Brown has hereunto set his hand and seal and the said The Franklin Savings Bank, has caused these presents to be executed for it and in its name by George W. Newell, its treasurer, and its corporate seal to be hereunto attached, this 15th day of April, A. D 1873.

EDWARD BROWN, [L. S.]
FRANKLIN SAVINGS BANK,

GEO. W. NEWELL, [SEAL]
*Treasurer*

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.
CITY OF CHICAGO. }

I, Francis M. Barrett, a notary public, in and for the city of Chicago, in the county of Cook and state of Illinois, do hereby certify, that Edward Brown, who is personally known to me as the same person whose name is subcribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument of writing, as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighteenth (18th) day of April, A. D. 1873.

[NOTARIAL SEAL] FRANCIS M. BARRETT,
*Notary Public.*

(In pencil): April 22, '73, Mattocks says above is O. K.

STATE OF RHODE ISLAND, }
COUNTY OF PROVIDENCE. } ss.

I, Langford P. Clark, notary public in and for county of Providence, state of Rhode Island, do hereby certify, that George W. Newell, who is personally known to me as the same person whose name is subscribed to the foregoing deed as having executed the same as treasurer of and for and in the name of the Franklin Savings Bank, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, and as the free and voluntary act of the said the Franklin Savings Bank for the uses and purposes therein set forth

Given under my hand and notarial seal, this 15th day of April, A. D. 1873.

[NOTARIAL SEAL.] L. P. CLARKE,
*Notary Public.*

[Endorsed:] Release. Edward Brown, trustee and the Franklin Savings Bank to Frank C. Taylor and Maria L. Taylor.

By Mr. KENDALL: I also introduce in evidence as complainant's "Exhibit 12," deed of release from Edward Brown to Frank C. Taylor, dated the 13th of October, 1873, with the endorsements thereon, which is as follows:

Know all men by these presents, that I, Edward Brown of the county of Cook and state of Illinois, for and in consideration of one dollar, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release and quit-claim, unto Frank C. Taylor of the county of Cook and state of Illinois, all the right, title, interest, claim, or demand whatsoever I may have acquired in through or by a certain trust deed, bearing date the twenty-sixth day of June, A. D. 1872, and recorded in the recorder's office of Cook county, in the state of Illinois, in book 111 of records, page 272, to the premises therein described, as follows, to-wit: That part of block sixteen (16), in Bushnell's addition to Chicago, bounded and described as follows, to-wit: Beginning at a point on the east line of Dearborn street, in the city of Chicago, in the county of Cook and state of Illinois, three hundred (300) feet north of the southwest corner of said block; thence running north on the east line of Dearborn street one hundred and three (103) feet more or less to the northwest corner of said block; thence east on the south line of Maple street one hundred and fifty (150) feet to an alley; thence south parallel with Dearborn street one hundred and three (103) feet more or less; thence west parallel with Maple street one hundred and fifty (150) feet to the place of the beginning. The same being lot four (4). block sixteen (16) Bushnell's addition to Chicago. Together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness my hand and seal this thirteenth day of October, A. D. 1873.

EDWARD BROWN. [SEAL.]

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

I, Lucius Hoyt a notary public in and for the county, in the state aforesaid, do hereby certify that Edward Brown who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 21st day of October, A. D 1873.

[NOTARIAL SEAL.] LUCUIS HOYT,
*Notary Public.*

[Endorsed]. State of Illinois, county of Cook, ss. No. 135,338. This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 11th day of November, A. D. 18—, at — o'clock —. M., and recorded in book 311 of records, on page 167. November 14th, A. D. 1873.

JAS. STEWART,
*Recorder.*

By Mr. KENDALL: I now produce the original letter written by Mr. Brown, July 29, 1879, to Frank C. Taylor, a letter-press copy of which was introduced in evidence by Mr. Swift. I produce this for the purpose of comparison with the copy now in the record, and to correct the same if found incorrect.

MARCH 11, 1890.

ROBERT B. KENDALL, being first duly sworn, testified on behalf of complainant, as follows:

Deeming it important to ascertain the exact date of birth of the children of Frank C. Taylor and Maria Louise Taylor, his wife, I wrote a letter to Mr. Taylor and asked him to give me a statement of the date of the birth of each of them, which he has done, and they are as follows:

Frank C. Taylor, born April 13, 1865.
Maria Louise Taylor, born July 3, 1866.
Josephine S. Taylor, born August, 3, 1867.
Alexander Taylor, born April 30, 1873.
Robert C. Taylor, born May 31, 1877.
Katherine Taylor, born December 26, 1879, and
Margaret Taylor, born March 25, 1884.

I believe these to be, from information thus derived, the tr dates of birth of each one of these children.

I wish to withdraw the objection I made to the introduction, as evidence in this case, of testimony taken before Henry W, Bishop, master in chancery of this court, in the foreclosure case, with the understanding that it shall stand as evidence in this case for all purposes.

By Mr. SWIFT: I have no objection to that.

By Mr. SWIFT: I will introduce in evidence as defendant's "Exhibit 62," the application for the loan of $30,000, for which the note and trust deed have just been introduced in evidence by Mr. Kendall.

By Mr. KENDALL: Objected to, because it purports to be a copy. I never saw the original.

By Mr. SWIFT: I give you notice to produce the original of this application, as I understand the original is in the possession of your client.

By the MASTER: This is offered as a copy of the original without any proof as to whether it is or is not a true copy, and notice is served upon the complainant to produce the original, but it thus far does not appear whether the original is or not in the custody of the complainant, or under his control. The master will permit this application to be copied in the record under the objection of counsel for complainant, although of the opinion that it will not be competent unless it shall be made to appear that it is a true copy, and that the original is either lost or cannot be produced, or is in the custody or under the control of the complainant.

No. 153. CHICAGO, June 26, 1872.

GEO. W. NEWELL, ESQ., TREASURER.

*Dear Sir:* I hereby make application for a loan of $30,000, for one (1) year, with interest at the rate of ten (10) per cent. per annum, payable semi-annually at such time and place as lender may dictate.

The security for such loan (to be free from all other incumbrances), will comprise land and improvements as follows, to-wit: 104 feet fronting west on North Dearborn street, with a depth of 150 feet on Maple street to a 16 foot alley; the said land being described as follows: Lot 4, block 16, Bushnell's addition to Chicago, being the southeast corner of North Dearborn and Maple streets and having a market value in cash of not less than $35,000.

The improvements thereon are to be five (5) stone front dwelling houses, to be constructed this year, at a cost of not less than $45,000, and their market value in cash will not be less than $45,000, making the total market value in cash of said land and improvements not less than $90,000.

The insurance on said improvements, as collateral security, will be at your dictation for term of loan for not less than $.....

Said premises are to be occupied as dwelling houses at a rental of $.....per.....

(Signed): F. C. TAYLOR,
*Applicant.*

*To GEO W. NEWELL., Esq., Treasurer.*

*Dear Sir:* I make the above application with the request that I may have the privilege of taking the money as I need it for the above mentioned purposes and paying it at any time within the term of the loan, interest to be charged for the time I have the use of the money.

(Signed): F. C. TAYLOR.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

Frank C. Taylor,
*vs*
Franklin Savings Bank. } *In Chancery.*

TO THE HONORABLE, THE JUDGES OF SAID COURT:

I, E. B. Sherman, master, to whom the above entitled cause was referred, directing him to take evidence therein and report the same to the court, respectfully reports:

That the foregoing record contains all the evidence offered by complainant and; defendant that the same was introduced by said respective parties in manner and form as hereinbefore appears.

Respectfully submitted,

E. B. SHERMAN,
*Master in chancery of said court.*

CHICAGO, March 15. 1890.

[Endorsed]: Filed Jany., 27, 1891.

WM. H. BRADLEY. *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION. }

I, William H. Bradley, clerk of the Circuit court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause, wherein Robert C. Taylor, Katherine Taylor and Margaret Taylor, *et al.*, are complainants, and Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann, Edward Baumann, Charles H. Mulliken, Frank C. Taylor, Maria L. Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor, Alexander Taylor, Ira Scott, *et al.*, are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 29th day of August, 1891.

WM. H. BRADLEY,
*Clerk.*

[Endorsed]: Filed Sept. 7, 1891.

OLIVER T. MORTON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No....., October Term, 1891.

Franklin Savings Bank,
*vs.*
Robert C. Taylor, *et al.*,

The clerk will enter my appearance as counsel for the appellant.

DAVID CAMPBELL.

[Endorsed]: Filed September 7, 1891.

OLIVER T. MORTON,
*Clerk.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

October Term, 1891.

Franklin Savings Bank, *et al.*,
*Appellants.*
*vs.*
Robert C. Taylor, *et al.*,
*Appellees.*

The clerk of said court will please print the portions of said record designated in the stipulation hereto attached.

SWIFT, CAMPBELL & JONES,
*Solicitors for Appellants.*

Chicago, October 30, 1891.

[Endorsed]: Filed November 5, 1891.

OLIVER T. MORTON,
*Clerk.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

October Term, 1891.

The Franklin Savings Bank, *et al.*,
*Appellants.*
*vs.*
Robert C. Taylor, *et al.*,
*Appellees.*

It is hereby stipulated that the following portions only of the record in the above entitled cause shall be printed:

| | | | | |
|---|---|---|---|---|
| Pages | 1, 2 & 4 | to | 16 | inclusive, Original Bill. |
| " | 34 | " | 40 | " Answer of Gilsdorff, *et al.* |
| " | 46 | " | 50 | " Petition for removal and bond. |
| " | 60 | " | 61 | " Answer of Ira Scott. |
| " | 63 | " | 64 | " Order substituting solicitors, dismissing as to certain complainants and leave to file amended bill. |
| " | 65 | " | 87 | " Amended bill (omitting exhibits.) |
| " | 134 | " | 138 | " Answer of Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor. |
| " | 140 | " | 146 | " Cross Bill, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor, Jr. |
| " | 149 | " | 161 | " Answer of Franklin Savings Bank and Hiram H. Thomas to amended bill. |

| | | | |
|---|---|---|---|
| Pages | 162 to 175 | inclusive, | Answer of Franklin Savings Bank and Hiram H. Thomas to cross bill |
| " | 176 " 178 | " | Replication, etc. |
| " | 179 " 180 | " | " |
| " | 184 " 186 | " | " |
| " | 187 " 188 | " | " |
| " | 189 " 190 | " | " |
| " | 191 | | Order: Answer of Scott to original bill to stand as answer to amended bill and cross bill. |
| " | 192 " 194 | " | Default of Mulliken, etc. |
| " | 195 " 196 | " | Answer of Frank C. Taylor and Maria L. Taylor to amended bill and the cross bill. |
| " | 197 " 210 | " | Opinion of Judge Blodgett. |
| " | 211 " 219 | " | Decree. |
| " | 220 " 222 | " | Assignment of errors. |
| " | 223 " 224 | " | Appeal bond. |
| " | 226 to the end. | | |

SWIFT, CAMPBELL & JONES,
*Solicitor for Appellants.*

ROBT. B. KENDALL,
*Solicitor for Appellees.*

[Endorsed]: Filed Nov. 5, 1891.

OLIVER T. MORTON, *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AT CHICAGO.

October Term, 1891.

OCTOBER 5, 1891.

5. The Franklin Savings Bank, *et al.*, *Appellants*,
*vs.*
Robert C. Taylor, *et al.*, *Appellee.*

It is ordered by the court, the Honorable John M. Harlan, Associate Justice Supreme Court United States, and Honorable Walter Q. Gresham sitting, and Honorable Henry W. Blodgett, District Judge now sitting, that the hearing of this cause be and the cause is hereby set down for the thirteenth day of January next.

Wednesday, January 13, 1892.

Present: Hon. Walter Q. Gresham, Circuit Judge.
Hon. Henry W. Blodgett, District Judge.
Hon. James G. Jenkins, District Judge.

5. The Franklin Savings Bank, *et al.*,
*vs.*
Robert C. Taylor, *et al.*

It is ordered by the court that this cause be and the same is hereby continued to the next session of this court.

Wednesday, June 8, 1892.

Present: Hon. John M. Harlan, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, District Judge.

5. The Franklin Savings Bank, *et al.*,
*vs.*
Robert C. Taylor.

Now come the parties by their counsel, and this cause comes on to be heard, and the court having heard the cause on the printed record, the briefs and oral arguments of counsel, takes the matter under advisement

Wednesday, January 18, 1893.

Present, Hon. William A. Woods, Circuit Judge.

Hon. Romanzo Bunn, District Judge.

Before Hon. John M. Harlan, Circuit Justice.

Hon. William A. Woods, Circuit Judge.

Hon. James G. Jenkins, District Judge.

5. Franklin Savings Bank, Hiram H. Thomas, Henry Gilsdorff, James B. Sullivan, Frederick Baumann and E. Baumann
*vs.*
Robert C. Taylor, Katherine Taylor,

Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the Circuit Court in this cause be and the same is hereby reversed with costs, and

this cause be and the same is hereby remanded to said Circuit Court with directions to dismiss the bill.

Monday, Februrary 20, 1893.

Present, Hon. Walter Q. Gresham, Circuit Judge.

Hon. William A. Woods, Circuit Judge.

5. Franklin Savings Bank, *et al.*,
*vs.*
Robert C. Taylor, *et al.*

It is ordered by the court, on motion of Mr. R. Kendall, counsel for appellees, that leave be and the same is hereby granted appellees to file "Petition for Rehearing" in above entitled cause.

Tuesday, May 2, 1893.
Present, Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Before, Hon. John M. Harlan, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, District Judge.

5. Franklin Savings Bank, Hiram H. Thomas, Henry C. Gilsdorff, James B. Sullivan, Frederick Baumann and E. Baumann
*vs.*
Robert C. Taylor, Katherine Taylor, Frank C. Taylor, Jr., Maria L. Taylor, Jr., Josephine S. Taylor and Alexander Taylor.

It is ordered by the court that the petition for rehearing in this cause be and the same is hereby overruled.

# UNITED STATES CIRCUIT COURT OF APPEALS.

*For the Seventh Circuit.*

No. 5.—JUNE SESSION, 1892.

The Franklin Savings Bank *et al.*, vs. Robert C. Taylor, *et al.* } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

*Before Harlan, Circuit Justice; Woods, Circuit Judge, and Jenkins, District Judge.*

## STATEMENT OF THE CASE.

The principal facts have been well stated by Judge Blodgett in his opinion—50 Fed. Rep. 289—as follows:

"This is a bill to review, reverse, and set aside a decree of foreclosure, entered in this court on the 30th day of April, 1880, under which defendant claims title to lots 1, 4 and 5 of the subdivision of lot 4, in block 16, in Bushnell's addition to the city of Chicago; and also to set aside a sale made July 15, 1881; under a decree for a mechanics' lien, in favor of Gilsdorff and others, entered in the Circuit court of Cook county, July 10, 1874. * * * *

The facts, as they appear from the proof, and which are not disputed, are, that on the 13th of June, 1871, Maria Louise Taylor, being seized in fee of all of lot 4, in block 16, Bushnell's addition to Chicago, joined, with her husband, Frank C. Taylor, in the execution of a deed of the premises to Ira Scott, to hold upon certain trusts, in the deed set forth, which trusts, so far as it is necessary to state them for the purposes of this case, were that the property was to be held for the benefit of Mrs. Taylor and the children of the

marriage between Frank C. Taylor, her husband, and herself, except that in the event of the death of Mrs. Taylor, and of the children, before the youngest child had reached the age of twenty-one years, Mr. Taylor, or his heirs, should become entitled to the remainder of the estate. The deed of trust contained an express provision 'that no lien, incumbrance, or charge shall be created on said premises,' and although there was a provision in the trust deed that the trustee might sell some portion of the premises for the purpose of improving that which was unsold, yet the provision was so guarded as to prohibit the creation of any lien, incumbrance, or charge upon the unsold portion of said premises.

At the time the deed was made there was a house upon the premises, which was occupied by Mr. and Mrs. Taylor as their home, this house covering only a comparatively small part of the lot.

When this trust was created three children had been born to Mr. and Mrs. Taylor, and four have since been born, and this bill was filed by the three youngest of the seven children, the three oldest having arrived at lawful age since this bill was filed, and the other four are still minors.

By the great fire of October 8th and 9th, 1871, the house upon the trust premises was destroyed, and the public records of deeds of land titles in the city were also destroyed, and the trust deed itself was for several years supposed to have been destroyed by the same fire, although it had been duly recorded within a few days after its date. In January, 1872, Mr. Taylor borrowed the sum of $30,000 from the Franklin Savings Bank, the principal defendant in this case, for which he gave his own note, payable one year after date, and, to secure the payment of that note, he and his wife executed to Edward Brown a trust deed upon the whole of said lot 4, in block 16. The money so borrowed by Taylor was used in building upon the trust premises a block of five dwelling houses, which cost about $53,700. In January, 1873, Taylor and his wife filed a petition in the Superior court of Cook county, under the provisions of what is known as the "Burnt Records Act" of this State, alleging the making and recording of the deed of trust, the destruction of the records, and the loss of the deed itself, and praying an establishment and confirmation of

the trust deed and its terms, as set out in said petition. And such proceedings were had under this petition, that on the 19th on March, 1873, a decree was entered establishing and confirming what was found, from the proof, to be a substantial copy of the trust deed, but, in fact, omitting the clause which provided that no lien, incumbrance, or charge should be created on the premises, and containing, in place of that clause, a clause that authorized the trustee to make liens for the purpose of rebuilding, etc.

After the entry of this decree, Scott, the trustee, and Taylor and wife made a subdivision and plat of said lot 4, dividing the same into five sub lots, numbered from 1 to 5, inclusive.

On the 22d day of July, 1873, Mr. Scott declined to act longer as trustee, and Taylor and wife filed a bill in the Superior court of Cook county, for the appointment of another trustee, and that such new trustee be empowered to make a loan of money sufficient to reimburse them for the fair value and cost of the improvements made on said lots, and a decree was on the 19th of August, 1873, entered appointing Charles H. Mulliken, trustee, as successor to Mr. Scott, and authorizing him to make a loan to pay Mr. and Mrs. Taylor the cost of the improvements made on the lots, not to exceed $53,700. Mr. Mulliken accepted the trust and on the 23d of August made four trust deeds covering sub lots 1, 2, 4 and 5 of said subdivision, to Francis S. Howe, trustee, to secure the payment of four notes of $9,000 each given by Mulliken and Mr. and Mrs. Taylor to the Franklin Savings Bank, and on the 1st of January, 1874, Mulliken, the trustee, and Mr. and Mrs. Taylor joined in the execution of another trust deed to Francis S. Howe, to secure the individual note of Taylor to the Franklin Savings Bank for $2,875.

The proceeds of the four first mentioned trust deeds were used to take up the $30,000 loan made by Taylor from the bank in June, 1872, and the last mentioned trust deed for $2,875 was to secure a personal indebtedness of Taylors' to the bank, not growing, as the proof shows, out of the rebuilding.

In September, 1873, a petition for a mechanic's lien was filed by Henry Gilsdorff for labor and materials used in the construction of

the block of new buildings, in which petition other contractors intervened. This case came to hearing in July, 1874, and resulted in a decree, establishing liens on the premises in favor of Gilsdorff and those who had intervened with him, which decree was afterwards affirmed by the Supreme court of this State at the September term, 1874. (74 Ill. 354.)

In June, 1876, the Franklin Savings Bank filed in this court a bill to foreclose the four trust deeds of August 23, 1873, which, after default of some of the adult defendants, and answers by the guardian *ad litem* of the infant defendants, was, in May, 1877, referred to a master to take proofs and report. In June, 1877, the original deed of trust to Scott was found and very soon thereafter bills of review were filed in the case under the "Burnt Records Act," and in the suit brought for the appointment of a new trustee in the place of Scott, and in which the decree appointed Mulliken trustee and authorized him to make the loan to pay for building the five houses, which bills of review resulted in decrees setting aside the former decrees in those cases, but the decree in the case under which Mulliken was appointed trustee, contained a clause that nothing therein, ordered or contained, should deprive the Franklin Savings Bank, or Howe, the trustee in the said trust deeds, of any interest they, or either of them, might have in the trust estate, the claims of the bank and said Howe not having been heard or adjudicated.

After the original trust deed was found, the bank filed a supplemental bill in the foreclosure case, which was answered. Before a report was made by the master, terms of settlement or compromise were made between the bank and the guardian *ad litem* of the infant defendants then in court, which included all the children then born, and all the children of the parents, except Margaret, the youngest. By this compromise, the children were to have one of the sub lots and the house thereon, free and clear of all incumbrance. On the 29th of April, 1880, a decree of foreclosure was entered in the foreclosure suits in pursuance of the terms of this agreement, which by its terms was a foreclosure of the four trust

deeds or sub lots 1, 2, 4 and 5 respectively, and of the trust deed securing the $2,875 (Taylor's individual debt), on the whole four lots, and a sale was directed to be made by one of the masters of the court of the sub lots 1, 2, 4 and 5 to pay the amount found due by said decrees on the respective trust deeds; the lien of the several trust deeds on the premises, covered by them respectively, being found by the decree to be subject to the prior mechanics' lien established by the decree in the Gilsdorff case.

A sale was made under this decree on the 16th of June, 1880, and each house and lot sold to the bank and certificates of purchase given by the master to the bank as such purchaser, and afterwards, to consummate the settlement made with the guardian *ad litem* of the infant children, the certificate of purchase for lot 2 at such master's sale was assigned to the guardian *ad litem*, and by him assigned to the six children then born, and a deed was in due time made to them by the master, and a deed was also made to the bank of lots 1, 4 and 5.

After the affirmance by the Supreme Court of the decree in the mechanic's lien case, the bank purchased the decree in that case, and was the owner of such decree at the time of the entry of the decree in the foreclosure case and at the time of the alleged compromise and settlement; and on the 15th of July, 1881, a sale was made under the mechanic's lien decrees, and the defendant, H. H. Thomas, who was then the president of the bank, became the purchaser of the three sub lots 1, 4, and 5, and it is admitted that this purchase was made by Mr. Thomas for the bank, and that he now holds the title solely for the bank and has no individual interest therein.

It also appears that the three oldest children were made defendants to the bill for the restoration of the deed of trust under the "Burnt Records Act," and appeared and answered by guardian *ad litem;* that the four oldest children were made parties to and appeared and answered by guardian *ad litem*, in the bill for the appointment of a new trustee, and that under the mechanic's lien suit the four oldest children were made parties defendant, and appeared and answered by guardian *ad litem*. But the Supreme Court, in the suits brought by Julia S. Taylor against the bank, to set aside the decree

in the mechanic's lien suit, as far as it affected lot 3 in said subdivision, found that there was no service upon the infant defendants in the mechanic's lien case. It also appears that the youngest child, Margaret, who is one of the original complainants in this case, was born after the entry of the decree in the foreclosure case. It also appears that all the seven children, born of the marriage of Mr. and Mrs. Taylor, who are parties to the original and cross bills in this case, were minors at the time the original and cross bills were filed."

In the Gilsdorff case there is in the record no proof of service of process upon the infant defendants, except the recital in the final decree of a finding that "due service of process was had upon all the defendants except the Franklin Savings Bank."

On the 20th of July, 1880, following the Master's sale under the foreclosure decree, Mulliken, as Trustee, and Frank C. and Maria L. Taylor, joined in the execution of a quit claim deed of lots one, two, four and five to Thomas, as President, for the use of the Savings Bank. No reference is made to that deed in either the bill or cross-bill.

The supplemental bill filed by the Savings Bank in the foreclosure case gave a true and full account of antecedent facts affecting the rights of the parties, including the discovery and contents of the deed of trust.

The terms in which the trust was defined, in so far as they are relevant here, are as follows:

"*Firstly*, for the use and benefit of the said Maria Louise Taylor, and the children of said Frank C. and Maria Louise Taylor, to be used and occupied by them as a homestead, or place of residence, subject, however, to the trusts and uses hereinafter contained, it being, however, expressly provided and understood that the improvements now standing on said premises may be added to, altered or removed, and new buildings

erected thereon, provided, *always*, there shall be no lien, incumbrance or charge created thereby on said premises; and it is further provided that the whole or a portion of said premises may be used for the purpose of deriving a revenue therefrom, as is hereinafter provided, and that a portion only of said premises may be used as such homestead as aforesaid. * * * * *

"*Secondly*, and upon this further trust, namely: The said Ira Scott, or his successors in trust, shall bargain, sell and convey a portion of said premises for the purpose of procuring funds to build upon and improve the remainder thereof, during the joint lives of the said Frank C. and Maria Louise Taylor, upon their joint written request, and such request shall be signified by their joining with such trustee in the execution of the deed or deeds of conveyance. * *

"*Provided*, always, that no charge or incumbrance on said premises, or any portion thereof, shall be thereby created by said Ira Scott or his successors in trust.

*Thirdly, to the effect*, that after the payment of costs, taxes and assessments, the income shall be paid to Mrs. Taylor, for her sole use and benefit, during the life of her husband, and that after his death there should be paid to her out of the income the sum of $3,000 annually, and the remainder, if any, to the children.

The Burnt Records Act of this State contains these provisions:

"Said decree of said court, when entered on either of the petitions above mentioned" (*i. e.*, a petition to establish title and petition to establish lien), "shall be forever binding and conclusive, unless an appeal be taken during the term of the court at which the decree shall be rendered, or a writ of error shall be sued out within twelve months from the entry of said decree, in which case the final decree entered in said cause shall be binding and conclusive, as aforesaid, from the entry thereof, except against minors and insane persons." * * * *And provided further*, That married women, insane persons and minors shall have two years after their disabilities are removed to prosecute a writ of error from said decree." * * *

"*And provided further*, That in all decrees against infants, persons of unsound mind, or married women claiming property in their own right, other than right of dower, the decree shall set forth the evidence upon which it is based."

The scope of the suit in which the decree of August 19, 1873, was rendered is sufficiently indicated by the court's finding, which followed closely the averments of the bill, and which, with abbreviations not affecting the sense, was as follows:

That in and by said deed, the premises were conveyed to Ira Scott and his successors in trust, to be held and managed by him and them in trust for the benefit of Frank C. Taylor, Maria Louise Taylor, their children, and the devisees and legatees of the said Frank C. Taylor; that by the terms and provisions of the trust conveyance, among other things, the said Scott and his successors in trust were authorized and empowered to build upon and improve the premises, or any part of the same, for the purpose of deriving a revenue therefrom, and to borrow money for the purpose of making the improvements, and to secure the payment of the same by executing on the premises, or any portion thereof, mortgages or trust deeds, and also to sell a portion of the premises for the purpose of raising funds to improve the trust estate; that from the date of the trust conveyance, during and until the great fire of October 8 and 9, the said Maria L. Taylor occupied the premises as a homestead, under the trust conveyance, in accordance with the terms thereof; that during that time the entire improvements of the premises consisted of the residence and outbuildings attached thereto; that by the fire all of the improvements on the premises were destroyed, and the said Frank C. and Maria L. Taylor, with their children, were thereby left without a home, and were also in other ways losers to an extent that they could not suitably provide for their necessary wants and those of their children and pay the taxes and assesments laid and asssessed on the premises, without in some way making the trust estate available as a source of revenue; that

the premises were situated in a portion of the city of Chicago that had been and continued to be valuable for residence purposes, and that good, careful and judicious management of the trust estate, for the best interests of all concerned therein, required the erection thereon of a block of five first-class residences; that owing to the destruction of the trust conveyance and the public records it was impossible for the trustee either to sell and convey the premises, or any portion thereof, or to borrow money upon the same as security until the terms of the trust should be declared by the decree of some court having competent jurisdiction in such matters, which at that time could not have been had without great delay, and that such delay would have operated greatly to the prejudice and damage of the trust estate; that to protect and preserve the estate, and acting for the best interests of all concerned, the said Frank C., as agent of Maria L. Taylor, and at her request, borrowed a large sum of money and with the same erected on the premises a block of five marble-front residences, one of which is now occupied by said Maria L. Taylor and her family as a homestead under the trust deed; that the improvements on the premises were commenced in the month of August, 1872, and completed in the spring of 1873, and were wise and judicious; that Maria L. Taylor, through her husband as her agent, had expended in said improvements and the erection and completion of said block of residences the sum of $53,700; that the money was judiciously and wisely expended, and that the fair value of the improvements is the sum of $53,700; that it is advisable and necessary for the best interests of the trust estate to sell and convey one or more of the houses so erected on the premises and to borrow enough money otherwise upon the trust estate to pay for the improvements the said sum of $53,700.

It was decreed that the said Charles Mulliken, who was therein appointed successor in trust, be "authorized and empowered out of any funds arising from the sale of said premises or any part thereof, or from any loan made for that purpose, to pay and discharge to the said Frank C. Taylor and Maria L. Taylor all the costs of said im-

provements as aforesaid advanced and paid by them or either of them, not to exceed in amount the sum of $53,700."

Besides the mortgages to the Savings Bank, Frank C. and Maria L. Taylor, and Mulliken as trustee, on the 10th of November, 1873, joined in a conveyance of sub lot 3, to Julia S. Taylor, wife of a brother of Frank C. Taylor, for $15,000; and in the case of *Franklin Savings Bank* vs. *Taylor*, 131 Ill. 376, the State Supreme Court upheld the sale and declared that the purchaser was not bound to look after the application of the purchase money.

This suit was commenced December 1, 1884, in the Superior Court of Cook county. The bill then exhibited was confined to an attack upon the title of the appellant, the Franklin Savings Bank, to lots 1, 4 and 5 of the property in controversy as derived through the sale made under the mechanics' lien decree in favor of Gilsdorff and others. The suit was removed upon the petition of the appellant to the Circuit Court of the United States for the Northern District of Illinois, where no steps were taken in it until the 18th of March, 1887, when the scope of the action was enlarged and the relation of the parties changed by the filing of an amended bill in which Robert C., Katharine and Margaret Taylor became complainants and the other children, Frank C., Maria L., Josephine S. and Alexander, who had been plaintiffs in the original bill, were made defendants. They at once filed a cross-bill, adopting the averments of the amended bill and praying substantially the same relief.

The amended bill reviewed the various steps taken in relation to the trust estate from the creation of the trust in June, 1872, to the filing of the original bill December 1, 1884, and in substance asked, and by the decree it was granted:

*First.* That the decree of foreclosure in the Federal court, and the

Master's sale and conveyances made under it, be declared void as to the interests of the complainants in the premises.

*Second.* That the two decrees of the Superior court of Cook county, entered upon bills brought for the review of its previous decrees, be declared absolute in respect to the claims of the Savings Bank.

*Third.* That the Gilsdorff decree, in the Circuit court of Cook county, be declared fraudulent and void, and likewise the deed of the Master in Chancery made in execution of that decree.

*Fourth.* That a new trustee be appointed as successor to Scott in the original deed of trust.

*Fifth.* That the Franklin Savings Bank be required to account for and pay over to the new trustee the proceeds of the rents and profits of the trust company while it was in the bank's possession.

In respect to the Gilsdorff decree the ground of review or attack is stated to be that it "was procured by misrepresentation and imposition upon said Circuit court in this, that the said court was misled and imposed upon by the production, as evidence, of said pretended deed of trust as confirmed by the Superior court." There is in the amended bill no charge of suppression or fraudulent concealment of the trust deed. The averments touching the point are: "That the original deed had been lost or mislaid and could not be found;" "that it was not true as alleged in said bill" — on which the burnt-records decree was obtained — "that said deed of trust had been destroyed by fire, but it was true, as your orators believe, that at the time said suit was pending in the Superior court, the said deed was lost, or secreted, and could not be found;" "that some time after the entry of the said decrees in the Superior court, the said deed of trust * * * was found;" and that in the

proceedings for the review of those decrees the court found "that it was newly discovered evidence not possible for the complainants in review to have produced at the hearing of said original bills of complaint," and thereupon ordered that the original decrees be set aside and annulled, but with a proviso to the effect that the rights of the Savings Bank had not been considered and were not determined.

In respect to the decree of foreclosure in the Circuit court of the United States the allegations are to the effect that the guardian *ad litem* acted without authority in entering into an agreement with the Savings Bank for a compromise and settlement of the suit; that the settlement was a fraud upon the rights of the complainants and upon the court, for which the foreclosure decree and sale ought to be set aside and declared void as to the complainants; and, "further, that the decree is erroneous and should be reversed and set aside for many apparent errors and imperfections, insomuch as it appears by the supplemental bill that said Mulliken as successor in trust to the said Ira Scott, had no power or authority to incumber the trust estate nor to create a lien or charge upon the land."

The respective positions of the parties, and the views which prevailed, are shown in the following extracts from the opinion below:

"The contention on the part of the complainants is, that the four trust deeds, given by Mulliken, trustee, with the consent of Mr. and Mrs. Taylor, on the four houses and lots, and also the decree in the mechanic's lien case, are all void and inoperative as against the complainants and cross-complainants, under the clause in the deed of trust to Scott, which prohibited the creation of any lien, incumbrance, or charge on the trust premises; that they are not bound by the decree in the foreclosure case because the decree was by consent, and they were not competent to give such consent; and that the decree in the

mechanic's lien case did not bind the infant defendants therein because there was no service of process on them, and also because such decree was obtained by imposing upon the court the false deed established by the decree in the "Burnt Records Act;" all of which and of the true terms of the genuine trust deed it is claimed the petitioners in the mechanic's lien case, and the bank and its president, Mr. Thomas, were bound to take notice. * * * * *

"It is insisted on the part of the defendants that the decrees in the "Burnt Records Act" case and in the case appointing a new trustee, fully empowered the making of the five trust deeds involved in the foreclosure suit, that four of the children were parties to those suits and bound by the terms thereof, and the other unborn children were bound by representation, and that those decrees remained in full force at the time such trust deeds were made.

"It may be, and probably is true, that so long as those decrees, as well as the decree in the mechanic's lien case, are allowed to stand, they are binding by their terms upon the infant defendants as well as upon the adult parties; but the essential question is, can these infants attack those decrees and have them set aside as against parties who acted under them while they were in force? I consider the law to be well settled that the infants can, by an original bill in the nature of a bill of review, attack any decree entered against them during their infancy, and have it set aside for fraud or error of fact. Daniell Ch. Pr. 169, 170; *Rogers* v. *Smith*, 4 Pa. St. 93; *Mills* v. *Dennis*, 3 Johns. Ch. 367; *Massie* v. *Donaldson*, 8 Ohio, 377; *Mathes* v. *Dobschuetz*, 72, Ill. 438; *Gooch* v. *Green*, 102 Ill. 509; *Lloyd* v. *Kirkwood*, 112 Ill. 337; *Kuchenbeiser* v. *Beckert*, 41 Ill. 172; *Kingsbury* v. *Buckner*, 134 U. S. 650, 10 Sup. Ct. Rep. 638. It is also well established, I think, by the authorities, that any consenting decree entered against a minor is not binding, and can be attacked by

original bill for the purpose of setting it aside; and in support of this practice no other authority need be cited than that of *Kingsbury* v. *Buckner*, above cited. Assuming, as I do, the right of these minors to attack this bill of foreclosure by their bill, I think the court must now assume that, had all the facts touching the validity of the securities involved in that suit been presented to the court, the court must have held that the securities sought to be foreclosed and enforced in that proceeding were invalid, and have dismissed that suit for want of equity as against the infant defendants; and, as the court was prevented from doing so, and was led into making an inequitable decree by the unauthorized agreement of the guardian *ad litem*, it will in this suit, now brought by the minors themselves, enter such decree as should have been entered in the original foreclosure case. As to the Gilsdorff decree, and the sale under it, I can see no reason why it is not properly the subject of attack by this bill. Undoubtedly, at the time that decree was rendered, the court properly assumed that it was justified by the deed of trust, as restored by the decree of March 29, 1873, under the Burnt Records Act, but that decree was based upon a most palpable error of fact, of which the bank and its president were charged with notice, and it seems to me the right of these infants to set aside that decree, and all that has been done under it, is palpable. To set aside these sales under the foreclosure and mechanic's lien decrees will, without doubt, work a hardship upon the bank, that has invested a large sum of money on the faith that the four $9,000 mortgages were valid: but the court can not escape the conclusion that there was ample constructive notice that the trustee had no power to make those mortgages, as well as that no valid mechanic's lien could be created on the trust estate, and to hold that these incumbrances are valid as against these children would make a precedent for defeating the rights of many more minor children."

Woods, J., after making the foregoing statement:

The rule that a decree against infants may be attacked by original bill for error of fact or mere mistake, as well as for fraud, is subject to an important qualification. Thus in *Lloyd* v. *Lockwood*, 112 Ill. 338, the court, after stating the general proposition, said: "The rule thus established is, of course, subject to the qualification that the decree of a court, having jurisdiction of the subject matter of the suit and the person of the infant against whom it is rendered, will not be thus set aside as against third parties who have in good faith acquired rights under it; but as against original parties to the suit, and their legal representatives, the rule as above stated will be enforced."

The essential question before us, therefore, is whether or not the Savings Bank, under any of the decrees mentioned, had acquired rights which ought to be protected, notwithstanding the discovery of the error upon which the decree was founded.

There are two reasons why that protection can not be claimed directly under the decree in the Burnt Records case. *First*, the bank was a party to that procedure; and, *second*, by the terms of the statute under which the decree was taken, it was made "binding and conclusive, except as against infants and insane persons;" implying necessarily it would seem that as against minors the decree had the effect only of *prima facie* evidence; although, so long as the original deed remained undiscovered, it was likely to be regarded and acted upon as conclusive.

The second decree, rendered August 19, 1873, is of more significance in the discussion. By it a new trustee was appointed and, in effect though not in direct terms, authorized to obtain money either by selling or mortgaging the trust estate for the purpose of paying

for the improvements which had been put upon the premises; and under that authority the loans were made and the trust deeds or mortgages executed, which were the principal source of the appellant's claim of title. Though obtained by use of the first decree, as evidence of the provisions of the trust deed, and on that account subject to be reviewed and set aside, the decree was on its face regular and valid, and as the decision of a court of general jurisdiction, it was, until set aside, binding upon all the parties, to the same extent as any other decree or judgment, and was available for the protection of any who had acted upon it.

It was not, as has been contended, a supplemental decree, obtained in aid of that under the Burnt Records Act, and therefore, like that, neither conclusive upon minors, nor a source of protection to the bank. The purpose of the first procedure was fully accomplished in the reinstatement, as of record, of the provisions of the trust deed, and no supplement was needed. Besides, the second decree was procured upon an independent bill, which, while it recited the fact of the rendition and the scope of the former decree, contained original and direct averments of the execution and provisions of the lost deed; so that if the reference to the former decree had been omitted, neither the character nor sufficiency of the bill would have been affected.

While it is true that this decree was founded on an error of fact in respect to the powers of the trustee, it was not a palpable error nor one of which the bank and its president were charged with notice. So long as the trust deed remained undiscovered, not only was the error not evident; there was nothing to suggest its probable existence. In substantial compliance with the requirement of the Burnt Records act that a decree

under it against minors should set forth the evidence on which it was based, the master's report, upon which the decree of March 29, 1873, was rendered, contained the full and explicit testimony of Frank C. Taylor, and other witnesses, to the effect that the copy embodied in the decree was a true copy of the trust deed; and under the circumstances there was neither reason for suspecting nor means of finding out the contrary. And yet it is insisted, and it is the pivot of the argument for the appellees, that the Savings Bank all the while had constructive notice and should be treated as if it had known that under the recorded and true deed of trust the trustee had no power to execute mortgages or to create liens. It would not be so held in a court of law even. It is of course true that that constructive notice which results from the recording of a deed continues in force though the record be destroyed. That is a rule which has its proper and necessary place in public policy, but it is not of universal or inflexible application. The record of a deed, when produced intact, is not final or conclusive proof of the contents or tenor of the original instrument. It may be contradicted by the production of the deed or by other evidence; and it follows necessarily that the force of a record, as constructive notice, can not prevail over that presumption of absolute verity which inheres in the judgment of a competent court. Whether the record has been destroyed or remains unharmed, a lawful decree, declaring the terms or tenor of an instrument to be different from the record of it, supersedes or overcomes the latter as evidence; and upon the same principle the decree of August 19, 1873, superseded the destroyed record of the trust deed; or, as it may be better to express it, the decree became conclusive evidence of what that record had shown. It was in recognition of this fact that it was deemed necessary, after the missing deed had been found and re-recorded, to bring bills of review, in behalf of

the infant parties, to obtain orders of the Superior court setting its decrees aside; and accordingly they were set aside, except that the rights of the Savings Bank were not determined. Whether or not the same parties should be allowed, even by original bill, to make a second attack upon those decrees, for the same cause, has not been mooted, and we do not stop to inquire.

But proceeding on the presumption that the second decree was one which should not be set aside to the injury of third persons, it is insisted that to the extent of the $30,000 first loaned to Taylor, which with accrued interest became *pro tanto* the consideration of the notes and mortgages which were foreclosed, the Savings Bank parted with no value upon the faith of that decree and therefore can claim no protection under it. The position is not tenable. The note given by Taylor for the first loan and the trust deed executed by him and Mrs. Taylor to secure the debt were surrendered and released. It is not claimed that these were without value. Taylor still had credit, and Mrs. Taylor, by reason of her right to receive the income of the trust estate, had an equitable interest, which doubtless was subject to the mortgage. *Blanchard* v. *Blanchard*, 1 Allen 225; *Van Rensselaer* v. *Read*, 26 N. Y. 558; *Monargue* v. *Monargue*, 80 N. Y. 320. Besides, the debt was due, and upon the new loan an extended credit was given. Upon these facts the bank, being without knowledge of the actual powers of the trustee, was entitled to rely and it is to be presumed did rely on the authority declared by the decree under which the trustee assumed to act. This conclusion, however, does not rest upon the doctrine of *Swift* v. *Tyson*, 16 Pet. 1, *Railroad Co.* v. *National Bank*, 102 U. S. 14, and

like cases, concerning the thansfer of negotiable paper in payment or for the security of a pre-existing debt. That doctrine is peculiar to negotiable paper and does not apply to transfers for like purposes of ordinary chattels or interests in real estate. It is so held in the case of *People's Savings Bank* v. *Bates*, 120 U. S. 556, where the rule declared by Judge Story in *Morse* v. *Godfrey*, 3 Story. 389, is quoted with approval. According to that it is not enough that there shall be given "a simple collateral security for an old indebtment or liability of the parties;" the one claiming to be an innocent purchaser or mortgagee of personal or real property "must not only have had no notice, but he must have paid a consideration at the time of the transfer, either in money or other property, or by a surrender of existing debts or securities held for the debts and liabilities." "There must be some new consideration moving between the parties and not merely a new security given for the old debts or liabilities, without any surrender or extinguishment of the old debts and liabilities or the old securities therefor." That one who merely receives a mortgage of land for a pre-existing debt does not become a purchaser for value was held or recognized in *Bushenbarke* v. *Ramey*, 53 Ind. 499, and *Straughan* v. *Fairchild*, 80 Id. 598, but in *Gilchrist* v. *Gough*, 63 Ind. 584, it was held to be sufficient for that purpose, that in consideration of the new security the time for the payment of the debt had been extended. And in *Glidden* v. *Hunt*, 24 Pick. 221, it was decided that when a creditor made a further loan to his debtor, and took a mortgage to secure both loan and debt, he became a mortgagee for value to the full amount of

both; because the presumption was that he had parted with his money in order to obtain protection for the antecedent advances, as well as for those made at the time. We need not go so far. In the present case all the elements of good faith mentioned in the cases cited were combined. The old obligation and security were surrendered and released; the time of payment was extended; an additional sum was loaned; and in fact there was a change of debtor, the trustee becoming the principal in the new obligations, and Taylor and wife sureties only.

It follows that, regardless of the compromise agreement, the Savings Bank was entitled to the decree of foreclosure, which it obtained, for the full amount of its demands, and that upon all the facts alleged in the bill no valid reason is shown for setting the decree aside or for annulling the mortgages on which it was based. Error is not apparent on the face of the record; and, in view of our conclusion that the mortgages were valid as against all who were bound by the decree of August 19, 1873, the objection that the guardian *ad litem* in the foreclosure case had given unwarranted consent to a compromise loses significance; if, indeed, it does not bring support to the decree, because by the compromise there was saved to the children one-fourth of the property and a corresponding portion of accrued rents, which otherwise in all probability would have been forfeited to the bank. It is to be observed, too, that upon its face it was not a consent decree. The guardian *ad litem*, though he had withdrawn a special answer, had filed another in the customary form. No fact was admitted; no proof waived; and every essential fact shown in the special answer which was withdrawn and all the facts, on which the claims of the infants are now asserted, were distinctly set forth in the appellant's supplemental bill upon which the decree was granted. It is not alleged, nor has it been suggested, that any fraud or deceit was practiced, to keep from the court a knowledge of the facts so averred. Consequently, at

the hearing below, it was not only not to be presumed, it would not have been competent to prove, that in the foreclosure case the court proceeded to a decree without knowing the contents of the bill; or that had the facts touching the validity of the securities, sought to be foreclosed and enforced, been presented to it, the court would have held the securities invalid and dismissed the suit. Besides, it is in proof that after the Savings Bank, in compliance with the compromise, had assigned its certificate of purchase, at the foreclosure sale, of one of the lots to the guardian *ad litem*, the latter in a petition for instruction, to which he made his wards defendants, reported the settlement and the relevant facts to the circuit court of Cook county, and that court, after a hearing at which the infants were represented by a guardian *ad litem* appointed for the purpose, ordered a transfer of the certificate and of the property to the children *in esse*, with a provision that after-born children should be admitted to share with those named; and, the certificate having been transferred as ordered, the master in the foreclosure case reported to the court for approval a deed for the conveyance of the lot described directly to the Taylor children, by name, and that deed the court approved. It is evident, therefore, that the compromise agreement received the deliberate approval of the local circuit court, which as a court of chancery had cognizance of the affairs of minors; and, by necessary implication from the last order made in the case, it had the approval of the court in which the decree of foreclosure was obtained. If that decree had been taken upon default of the infant defendants, or if upon its face it appeared to have been taken in pursuance of a compromise which was not shown to have had the explicit approval of the court, it may be that it would have been subject to review without inquiry into the merits of the compromise; but when,

without impugning the fairness of the proceedings in court, it is proposed to set aside a decree, which upon its face is in all respects regular, because of an alleged agreement or consent of the guardian *ad litem* which is not referred to in the record, we are strongly inclined to think it should be alleged and proved not only that the agreement had been made, but that it was not beneficial to the infants concerned or for some other reason ought not to have been made. See *Walsh* v. *Walsh*, 116 Mass. 377. The maxim that equity regards substance rather than form would seem to be applicable to such cases.

Concerning the Gilsdorff decree a single question is presented. When the contracts were made and the work done and materials furnished, which were the foundation to the liens thereby declared, the decree in the Burnt Records case not having been entered, the parties were chargeable with constructive notice, and when the savings bank took an assignment of the decree it had actual knowledge of the provisions of the trust deed. There is, therefore, no reason why that decree is not reviewable in this action for the error of fact upon which it was founded, unless it is because it had been affirmed by the Supreme Court of the State, without the right being reserved or leave obtained of that court to bring the suit.

Upon that question, in *Southard* v. *Russell* 16 How. 547, 570, it is said: "The better opinion is, that a bill of review will not lie at all for errors of law alleged on the face of the decree after the judgment of the Appellate court. * * * Nor will a bill of review lie in the case of newly-discovered evidence after the publication, or decree below, where a decision has taken place on appeal, unless the right is reserved in the decree of the Appellate court, or permission be given on an application

to that court directly for the purpose. This appears to be the practice of the Court of Chancery and House of Lords, in England, and we think it founded in principles essential to the proper administration of the law, and to a reasonable termination of litigation between parties in chancery suits." It is insisted that this is a *dictum* and ought not prevail against the weight of authority and reason to the contrary. But it is quoted with approval in *Kingsbury* v. *Buckner*, 134 U. S. 650, 671; and we are not disposed to disregard it. We consider it applicable, too, to a decree which has been affirmed as well as to one entered upon the order of the Appellate Court. In *Durant* v. *Essex Co.*, 101 U. S. 555, it is said: "On a mandate from this court affirming a decree, the Circuit court can only record our order and proceed with the execution of its own decree as affirmed. It has no power to rescind or modify what we have established." And the fact that the relief is sought by an original bill instead of bill of review proper should, we think, make no difference. The ground of relief isthe same whether it be sought in one way or the other. Even when there has been no appeal the rule is that the granting of a bill of review for newly discovered evidence is not a matter of right, but it rests in the sound discretion of the court. "It may, therefore, be refused, although the facts, if admitted, would change the decree, where the court, looking to all the circumstances, shall deem it productive of mischief to innocent parties, or for any other cause unadvisable." *Story, Eq., Plead.*, Sec. 417. Accordingly in some jurisdictions, though not in all, special leave of court must be obtained for bringing the bill.

Concernig the objection that the Gilsdorff decree was entered without service of process on the infant defendants, it may be remarked that if the decree could be attacked on that ground in any

court except that in which it is rendered, it has not been attempted in the bill before us, which alleges nothing on the point. The court in which the decree was obtained being one of general powers, the presumptions are in favor of its jurisdiction in any matter of which it has taken cognizance; and, besides, this decree as it is presented in the record before us shows a finding that process had been duly served. It is true that in the reporter's statement of facts preceding the opinion in *Franklin Savings Bank* v. *Taylor*, 131 Ill. 376, it is said that "no summons was ever served on either of the defendants;" but that statement is not evidence here, and would not be if it had been made by the court instead of the reporter. It is, moreover, inconsistent with the opinion and judgment of the court, in which, while it is held that the decree was not binding upon the appellee, Julia S. Taylor, because she was not a party, it is said that it was "of course" "*res judicata* as to the parties then before the court." And when the case was directly before that court on appeal—*Taylor* v. *Gilsdorff*, 74 Ill. 354—the chief dispute was whether "the interest in remainder in the estate held by the trustee for the heirs of Taylor" could "be subjected to a mechanics' lien." But if none of the children had been served with process the question was not presented, and it is not to be presumed that the court would have considered it or would have affirmed the decree; since, if process had not been served, the decree was in respect to the minor defendants void upon its face. It follows that the title of the Savings Bank, acquired through the sale under the mechanic's lien decree, should not, upon the facts averred in the bill, have been disturbed.

The question remains whether or not the children born after the rendition of any of these decrees are bound thereby. If so, it is

because they are to be considered as having been represented in the suits by those who were parties. Upon that subject we quote from the opinion in *McArthur* v. *Scott*, 113 U. S. 340, where the authorities are reviewed:

"The general rule in in equity, in accordance with the fundamental principles of justice, is that all persons interested in the object of a suit, and whose rights will be directly affected by the decree, must be made parties to the suit. Exceptions to this have been admitted, from considerations of necessity or of paramount convenience, when some of the persons interested are out of the jurisdiction, or not in being, or when the persons interested are too numerous to be all brought in. But in every case there must be such parties before the court as to insure a fair trial of the issue in behalf of all."

"The cases in courts of general chancery jurisdiction, cited in behalf of the defendants, * * * naturally range themselves in several classes."

"Some of them were of mere changes of investment, leaving undiminished the interests of all parties in the property in its new form. * * * * * * To the same class belong suits for partition, which are either for a division in severalty of lands before held in common, or else for a sale of the whole land, and a division or investment of the proceeds for the benefit of those who, but for the sale, would have had interests in the land. * * *

"Another class of cases is that of creditors, who are entitled to present payment of their debts, whoever may be the future owner of the estate. For instance, in a bill to enforce a debt charged upon real estate devised to one for life, with contingent remainder to his unborn son, the executor and the tenant for life are sufficient parties, because, as was said long ago by Lord Hardwicke, if there is no one in whom the estate of inheritance is vested, "it is impossible to say the creditors are to remain unpaid and the trust not to be executed until a son is born. If there is no first son in being, the court must take the facts as they stand." * * *

"In some other cases, when all the interests are legal, and not equitable, the owner of the first estate of freehold, representing the whole estate, and identified in interest with all who come after him, sufficiently represents those yet unborn. In case of an estate tail, for instance, Lord Redesdale held it to be sufficient, in order to bind contingent remaindermen, to bring before the court the first tenant in tail (although an infant, incapable at law of barring remaindermen), and if no tenant in tail in being, the first person entitled to the inheritance, and if no such person, then the tenant for life. But the reason assigned by that great master of equity was, 'that where all the parties are brought before the court that can be brought before it, and the court acts on the property according to the rights that appear, without fraud, its decision must of necessity be final and conclusive.'" *Giffard* v. *Hort*, 1 Sch. & Lef., 386, 408; Calvert on Parties, 55-60. The necessity of the case being the only reason for this, it follows that where the successive estates are equitable, and supported by a legal estate devised in trust, the trustees also are necessary parties. *Hopkins* v. *Hopkins*, West Ch. 606, 619; *S. C.* 1 Atk. 581, 590; *Cholmondeley* v. *Clinton*, 2 Jacob & Walker, 1,113; *Mullins* v. *Townsend*, 5 Bligh., N. R. 567, 591; *S. C.*, 2 Dow & Cl. 430, 438; *Ex parte Dering*, 12 Sim. 400; Calvert on Parties, 253, 327."

By the deed of June 13, 1871, the entire legal estate was vested in the trustee, and the present beneficial interest in Mrs. Taylor, the rights of other beneficiaries being all remote and contingent. It is to be observed, too, and in this the case may be distinguished from *Breit* v. *Yeaton*, 101 Ill. 252, the trustee, with the consent of Mrs. Taylor and husband, had power "to sell and to give discharges for the purchase-money and for the rents and profits of the estate." *Franklin Savings Bank* v. *Taylor*, *supra*. So that if this trust had been created by devise, instead of deed, it would be literally, as it is essentially, within the 49th Equity rule of the Su-

preme Court, by which in such cases the trustee represents the beneficiaries, who need not be made parties, unless at the hearing the Court shall require it.

In *Breit* v. *Yeaton*, *supra*, cited in behalf of the appellees, a marriage settlement had been made whereby the property of the future wife was conveyed to trustees for the benefit of the husband and wife during their joint lives and for the benefit of their children after the death of the wife. After the birth of one child the husband and wife brought a bill making the trustees only parties defendant seeking to incorporate into the marriage settlement certain powers of sale which it did not contain in its original form. The original property (certain stocks or bonds) was subsequently sold under the power thus introduced and the proceeds invested in lands belonging to the husband, and of which the husband subsequently repossessed himself by conveyance from the trustees. The suit was to compel a conveyance to the heirs at law, including after-born children, and for partition. Treating the question of parties as if the interests involved were all legal, the Court said:

"Counsel for the plaintiffs in error seem to concede that J. Southgate (the child *in esse*) should have been made a party, but contend that it was competent to render a decree in that proceeding, binding upon those not in being, and they cite *Story's Equity Pleadings*, sections 145, 792, where it is said: 'As it is sufficient to bring the first tenant in tail before the court, if in being, whether he be plaintiff or defendant in the suit, so if there be no such tenant in tail in being, the first person in being entitled to the inheritance should be made a party, and if there be no such person in being, then the tenant for life; and in such cases the decree made will bind the other persons not in being.' This is upon the principle that where the interest of one person is involved in that of another, and that other possesses the legal right, so that the interest may be asserted in his name, it is not necessary to bring both before the

court. Marshall, Ch. J. in *Hopkirk* v. *Page*, 2 Brock. 42. Manifestly, then, the rule can have no application here. There is here no prior estate of inheritance, and the interests of the heirs at law are not involved in that of another, but on the contrary are adverse to all other interests to be derived under and by virtue of the power. The decisions hold that the heirs at law, in cases like the present, are purchasers, and no decree will affect their rights to which they have not been made parties."

The quotation from Story, manifestly, is applicable only when the interests are legal and not equitable. And of the cases in support of the last proposition one only is explicit upon the point. In *Parker* v. *White*, 11 Ves. 219, it is said, concerning a marriage settlement which provided contingent remainders for children, that the parents took as purchasers for the children; but in none of them is anything said upon the subject of parties by representation. In *Graham* v. *Houghtalin*, 1 Vroom, 552, there is a *dictum* to the effect that the rights of the unborn were not and could not have been affected by the decree there in question; but the point ruled was that the decree was void, even as against children in *esse* who were parties, because the court was without jurisdiction of the subject matter. Conceding that the beneficiaries of contingent interests take as purchasers, and that they should be made parties to any procedure designed to affect their rights, it does not follow that unborn beneficiaries may not be parties by representation.

While it is true that the interests of those who are to share an estate or fund are in a sense adverse, inasmuch as every addition to the number of participants diminishes the share of each; yet when the litigation is not between the members of a class, but between the class as a whole and other parties claiming adverse rights, it is evident that a defense made by

or in behalf of one of the class must inure to the benefit of all the members alike; and in such cases where the rights of unborn persons are involved it is not unreasonable that they should be deemed to be represented by the living parties who are identified with them in interest. But when, as in this case, the successive interests are all equitable and supported by a legal estate devised or granted to a trustee, the latter is an indispensable party, and, when before the court, may well be regarded, we think, as representing, for the purposes of the suit, the remote and contingent interests of beneficiaries who can not be joined. Certainly the representation ought to be deemed sufficient when the trustee and all *in esse* of the class to which the unborn belong are before the court. If Mrs. Yeaton, in the case referred to, could not, as against unborn and unbegotten children, have the alleged mistake in her ante-nuptial agreement corrected, then as against such parties how could she obtain a decree for the annullment of a forged deed or one procured by duress or fraud? No doctrine, or rule of practice, can be sound or tolerable which involves such possibilities.

The further objection is made that both in the Burnt Records case and in that for the appointment of a trustee, it was alleged in the petition or bill that the children made defendants were the only ones interested; that the allegation was not denied; and consequently the court was not called upon, as it should have been, to consider whether or not the interests of unborn children were properly represented. But the provisions of the trust deed whereby those rights were created were fully and fairly set forth in each case, and, as has been already said in another connection, it is not to be supposed that the court entered the decrees without knowing the contents of the bills upon which it was proceeding.

In respect, however, to the second decree, rendered August 19, 1873, it should be noted that while Scott and Peabody, the trustees appointed by the deed, were made defendants, it was alleged that they had resigned, and were refusing to act further as trustees. They were, therefore, only nominal parties; and in fact they did nothing in the case which was or was not intended to be representative of any interest. The proper course, we think, for the court to have taken under the circumstances, was first to appoint the new trustee and cause him to be made a party, and then to proceed with the case in the regular order. As it was, there was only a nominal representative of the legal estate before the court when the decree was entered. In all the other cases the parties necessary for the representation and protection of all interests were properly before the court; and it follows that the title acquired by the appellant through the Gilsdorff decree was good against the present attack of the complainants, who were born after its rendition, as well as against the cross-complainants who were defendants in the case, and in whose name the appeal to the Supreme Court was prosecuted.

There is a broader and more equitable view of the case, which leads to the same conclusion.

The value of the trust property as it was left by the fire, according to the estimate put upon it by Frank C. Taylor, in his application for the first loan, was $25,000, and there is no evidence that it was worth more. The sub-lots, afterwards platted, were, therefore, of the average value of $5,000; and the houses built upon them each cost a little more than twice that sum, making the value of each house and lot about $15,000. That was the consideration for which one of the properties was conveyed

to Julia S. Taylor; and according to the decision in *Franklin Savings Bank* v. *Taylor*, *supra*, that sale was regular, and the proceeds, it is to be presumed, went to the proper uses of the trust. As the result of the compromise agreement another lot, with improvements of equal value, was conveyed to the Taylor children, and the remaining three lots, worth without improvements not more than $15,000, were conveyed to the Savings Bank. In other words, when this suit was brought, as a result of the transactions complained of the trust estate had been enhanced by the sum of $5,000; and the bank, in return for $20,000 of its money expended in improving two lots for the benefit of the appellees, had received three lots worth but $15,000. The aim of the suit is that those lots, with the houses on them, erected at a cost of $30,000, which the bank and its assignors, the mechanic's lien holders, contributed, shall be surrendered to the trustee for the use of the appellees, and that for its outlay of half a hundred thousand dollars the bank shall receive nothing. The proposition involves not merely a hardship to the bank, which, according to the opinion of the Circuit court, could not be remedied without making a precedent for defeating the rights of minors; it means, in our opinion, an injustice, so unconscionable in view of all the circumstances as to make judicial sanction of it at once unnecessary and impossible.

When the trust deed was found and the mistake made evident, which had prevailed concerning the powers of the trustee, it was doubtless competent, as it would have been plainly just and right, for the parties, in conformity with the authority which the trustee had, to convert their loans and mortgages into an outright sale to the bank of a part of the property equal in value to the money re-

ceived and expended upon the estate. And that is practically what was accomplished by the compromise agreement and by the conveyances which followed the foreclosure sale, including the deed of quit claim which Mulliken, of trustee, and Frank C. and Mrs. Taylor joined in executing to the president of the bank; and so long as no proffer is made of adequate recompense to the bank in some other mode, there can be, in our opinion, no good reason for disturbing the result, unless it should be to require a conveyance to the trustee of the lot which was conveyed to the Taylor children, whereby they were given a title in fee simple and a present right of possession when they were entitled only to the remote and contingent interest defined by the trust deed. But that is a matter between them and their mother, in which the Savings Bank is not concerned.

If the mortgages to the bank be regarded as void, it is still true that the trustee received and used the bank's money for the purpose of improving the property or paying for improvements already put upon it under circumstances which not only justified but required the expenditure. It was within the trustee's power to make improvements and to sell portions of the property for that purpose; and the fact that the money was obtained and expended without a previous bargain for the sale of any part of the property did not preclude the making of a subsequent contract to that effect. There is nothing in the terms of the trust which forbade it, and, if there were, in view of the mistake, sanctioned by two decrees of court, under which the money was obtained, equity, if it would not have compelled a settlement of the character suggested, certainly should not intervene to annul one which was fairly made by the parties, on terms to which they might in the first instance have rightfully agreed.

On the theory of our conclusion that the mortgages were valid and enforcible, the Savings Bank was never under any necessity, and, therefore, possibly had no right to seek relief on the ground of mistake; but on the assumption that for any of the technical objections made to them the mortgages were invalid, we deem it clear that the money obtained of the bank was furnished under such a mistake of fact as to warrant equitable relief, which could have been properly granted, in the way already indicated, by compelling the trustee and Frank C. and Mrs. Taylor to convey to the bank enough of the trust property to liquidate its demands. Between the principal parties, the bank and the trustee, it was plainly a case of mutual mistake; and if there was no mistake on the part of Frank C. Taylor, then his conduct was a fraud upon the bank, which was no less available as a ground of relief. It was upon his testimony, corroborated by other witnesses, that the two decrees of the Superior court were procured which declared the authority of the trustee to execute mortgages; and if it be conceded that those decrees were founded upon an error of fact, for which they were subject to be set aside, even as against the appellant or any third party claiming to have acquired rights under them, the very concession demonstrates the mistake, which, within the recognized rules of equity, makes the granting of relief in the manner stated both possible and proper.

The decree of the Circuit court should, therefore, be reversed and the cause remanded with instructions to dismiss the bill, and it is

*So ordered.*

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

I, Oliver T. Morton, Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, do hereby certify that the foregoing pages 548, pages numbered from 1 to 531, inclusive, contain a true copy of the transcript of the record and the proceedings in the case of

The Franklin Savings Bank, *et al.*,
*vs.*
Robert C. Taylor, *et al.*

No. 5, October term, 1891, as the same remains upon the files and records of said United States Circuit Court of Appeals, for the Seventh Circuit.

(SEAL).

UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, for the Seventh Circuit, at the City of Chicago, this 23d day of March, A. D. 1894.

OLIVER T. MORTON,

Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit.

UNITED STATES CIRCUIT COURT.

Northern District of Illinois.

Wednesday, May 3, 1893.

Present, Hon. Peter S. Grosscup, District Judge.

Robert C. Taylor, *et al.*,
*vs.*
The Franklin Savings Bank, *et al.* } *In Chancery.*

On motion of Swift, Campbell and Jones, solicitors for Franklin Savings Bank, it is ordered that the Mandate of the United States Circuit Court of Appeals for the Seven Circuit in the above entitled cause be filed and that cause be redocketed.

NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION. } ss.

I, S. W. Burnham, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the third day of May, A. D. 1893, in the cause wherein Robert C. Taylor, *et al.*, are the complainants, and the Franklin Savings Bank, *et al.*, are the defendants, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said District, this 29th day of March, A. D. 1894.

[SEAL.]

S. W. BURNHAM,
*Clerk.*

IN THE CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF ILLINOIS.

Saturday, May 6, 1893.

Present, Hon. William A. Woods, Circuit Judge.

Robert C. Taylor, *et al.*,
*vs.*
Franklin Savings Bank, *et al.*
*In Chancery.*

and

Frank C. Taylor, Jr., *et al.*,
*vs.*
Franklin Savings Bank, *et al.*
*Cross Bill.*

This cause came on to be heard at this term, and upon consideration of the Mandate of the United States Circuit Court of Appeals for the Seventh Circuit filed in said cause, it is ordered that the bill of complaint, and the cross bill of complaint herein, be dismissed for want of equity, and that cross complainants, Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S. Taylor, and Charles D. Sherman as the next friend of the infant complainants, Robert C. Taylor, Katherine Taylor and Margaret Taylor, and of the infant cross complainant, Alexander Taylor, pay to the defendants their costs of suit in said Circuit Court of Appeals, taxed at seven hundred and eighty three Dollars and seventy cents, and their costs of suit in this Court to be taxed by the Clerk of this Court, and that said costs be apportioned between the said parties as follows:

Three-sevenths of said costs to be taxed against the cross-complainants, Frank C. Taylor, Jr., Maria L. Taylor, Jr., and Josephine S.